IN THE SUPREME COURT

STATE OF FLORIDA

CASE NO. SC01-1000

IN RE: ADVISORY OPINION TO THE ATTORNEY GENERAL – AUTHORIZATION FOR COUNTY VOTERS TO APPROVE OR DISAPPROVE SLOT MACHINES WITHIN EXISTING PARI-MUTUEL FACILITIES

INITIAL BRIEF AND APPENDIX of FLORIDIANS FOR A LEVEL PLAYING FIELD (Supporting the Initiative Petition)

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INTRODUCTION

Floridians For A Level Playing Field ("Floridians") has formulated and sponsored an initiative petition entitled "Authorization For County Voters To Approve Or Disapprove Slot Machines Within Existing Pari-Mutuel Facilities" (the "Petition"), seeking to amend Article X of the Florida Constitution to add a new Section 19 thereto, in order to authorize slot machines within existing licensed pari-mutuel facilities in the State in counties where authorized by vote of the electorate. The Petition has been forwarded to the Court by the Attorney General for an advisory opinion on the issue of one subject under Article XI, section 3 of the Constitution, and the issue of ballot title and summary under section 101.161, Fla. Stat. (2000).

STATEMENT OF THE CASE AND FACTS

Floridians is a political action committee which has formulated and sponsored the Petition to amend the Florida Constitution to authorize slot machines within existing licensed pari-mutuel facilities in the State in counties where authorized by vote of the electorate. Floridians believe the pari-mutuel industry, which is fully licensed, regulated, and taxed by the State, has been severely damaged economically by gaming activities which are slot machines or their equivalent by Indian Tribes and so- called "cruises to nowhere" -- illegal but nevertheless occurring openly and in an unregulated and untaxed manner -- and that adoption of the Petition by the electorate and

subsequent approval by county electorates will permit a "level playing field" in these counties.

The Petition seeks to amend Article X of the Constitution entitled "Miscellaneous" to add a new Section 19 providing constitutional authorization therefor.

The ballot title of the Petition is:

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

The ballot summary of the Petition is:

> 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.

The full text of the new Section 19, which the Petition seeks to add to Article X, Fla. Const., reads:

> **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.

On October 30, 2000, Floridians obtained approval for the format of the Petition from the Secretary of State. Floridians then began the process of gathering sufficient signatures for placement of the Petition on the ballot for the general election to be held in November 2002.

In due course, Floridians submitted to the office of the Secretary of State the requisite number of signed petitions to initiate the advisory opinion process. On April 26, 2001, the office of the Secretary of State confirmed that county supervisors had verified a sufficient number of signatures on the Petition to request an advisory opinion from the Court, and it delivered the Petition to the Attorney General. On May 18, 2001, the Attorney General transmitted the Petition to the Court for an advisory opinion. (Appendix 1).

On June 4, 2001, the Court set June 25 and July 12, 2001, as the dates for initial

and responsive briefs to be filed by interested parties. This brief is filed by Floridians in support of the Petition.

SUMMARY OF THE ARGUMENT

In this advisory opinion proceeding, the Court determines only if an initiative petition complies with two requirements. First, a proposed constitutional amendment must embrace "but one subject and matter directly connected therewith." Art. XI, sec. 3, Fla. Const. Second, the ballot title and summary must accurately reflect the substance and effect of the proposal in clear and unambiguous language, so as to give electors fair notice of the proposal's purpose. Section 101.161(1), Fla. Stat. (2000). The Petition meets these two requirements.

The Attorney General's transmittal letter to the Court identifies concerns he suggests the Court may wish to consider in evaluating the one-subject requirement and the requisites for a ballot title and summary. Each of these concerns is without merit.

The Attorney General's single-subject comments are directly contrary to Floridians Against Casino Takeover v. Let's Help Florida, 367 So.2d 337 (Fla. 1978) ("Floridians Against") and Advisory Opinion to the Attorney General -- Limited Casinos, 644 So.2d 71 (Fla. 1994) ("Limited Casinos"), as well as other decisions of the Court upholding provisions similar or identical to those in this Petition.

Most of the Attorney General's ballot summary objections are answered by the Petition itself, which provides that the Legislature will license and regulate any slot machine operations authorized in a county by vote of the electorate of that county. The only objection to the ballot summary warranting careful analysis is that directed at the portions of the summary which first state that the Petition "requires the legislature to . . .tax such slot machines. . .," and then makes clear that the "2/3 majority vote for new state taxes provided in Article XI, Section 7" does not apply to such taxation. As the Attorney General correctly observes, Article XI, Section 7 by its own terms would not apply to such taxation. Thus the language of the proposed constitutional provision that "[t]he 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" need not have been included. However, the proponents believed that the electorate was entitled to know that a provision of the Constitution inserted therein by that electorate's approval of a 1996 initiative petition just five years ago would not apply. It is certainly true that an analysis of this Court's advisory opinion approving the 1996 initiative petition would make clear that the 2/3 approval would not apply to taxation of pari-mutuels by the Legislature under this Petition, but it is equally true that the electorate cannot be presumed to read such advisory opinions of this Court, much

less the briefs of proponents and opponents filed in this Court on the issue. In any case, there simply cannot be anything misleading in telling the electorate the truth.

The issues raised by the Attorney General thus provide no basis to withhold this Petition from a vote of the electorate. The Court approaches requests for the invalidation of an initiative petition with "extreme care, caution and restraint." Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982). It demands that the proposal under consideration be shown to be "clearly and conclusively defective." e.g., Weber v. Smathers, 338 So. 2d 819, 821 (Fla. 1976). The Attorney General has made no such showing, and none can be made with respect to this Petition.

Over the years a variety of gaming proposals have been initiated by petition and submitted to the electorate. The voters, who certainly have been able to understand (and reject) these proposals, have only approved the Lottery. But it is for the electorate to make that decision. The electorate should be permitted to do so here as well.

ARGUMENT

I. The Petition Meets The Single-Subject Requirement Of Article XI, Section 3 Of The Florida Constitution.

Article XI, section 3 of the Florida Constitution provides:

> The power to propose the revision or amendment of any portion or portions or 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. . .

(emphasis supplied)

The Court's role in this advisory proceeding to review the instant Petition for conformity with the single-subject requirement of Article XI, section 3 is limited -- as the Court has repeatedly stated. See, e.g., Advisory Opinion to the Attorney Re: Florida Transportation Initiative for Statewide High Speed Monorail, Fixed Guideway or Magnetic Levitation System, 769 So.2d 367, 368-69 (Fla. 2000) ("Monorail"). Neither the wisdom nor merit of the Petition is an appropriate consideration for the Court. Monorail, 769 So.2d at 368 ("This Court's review of a proposed amendment . . . does not include an evaluation of the merits or wisdom of the proposed amendment."); Limited Casinos, 644 So.2d at 75 (Fla. 1994) (declaring that "we do not pass judgment upon the wisdom or merit of the proposed initiative amendment.");

Advisory Opinion to the Attorney General Re: Tax Limitation, etc., 644 So.2d 486, 489 (Fla. 1994) ("Tax Limitation I") ("This Court does not have the authority or responsibility to rule on the merits or the wisdom of these proposed initiative amendments . . ."). In light of this Court's previous articulations of the reasons and standards for the single-subject requirement as well as particular decisions of this Court approving initiative petitions that raised indistinguishable issues concerning the single-subject requirement, the Petition here must be found to meet the single-subject requirement of Article XI, section 3 of the Florida Constitution.

A. The reasons and standards for the single-subject requirement of Article XI, Section 3 have been clearly articulated by this Court.

1. No logrolling or substantial alteration of purpose.

The two primary reasons for the single-subject requirement of Article XI, section 3 are: (i) "to prevent what is known as 'logrolling,' which is a 'practice whereby an amendment is proposed which contains unrelated provisions, some of which electors might wish to support, in order to get an otherwise disfavored provision passed.' " Monorail, 769 So.2d at 369, quoting Limited Casinos, 644 So.2d at 73; and (ii) "to prevent a single constitutional amendment from substantially altering or performing the functions of multiple aspects of government." Monorail, 769 So.2d

at 369. Article XI, section 3 "protects against multiple 'precipitous' and 'cataclysmic' changes in the constitution by limiting to a single subject what may be included in any one amendment proposal." Monorail, 769 So.2d at 369.

2. . . . . Presumption that electorate should decide.

The Court is always loathe to deprive the electorate of the opportunity to adopt or reject a proposed constitutional amendment, and therefore the proposed amendment must be approved unless it is clearly and conclusively defective. Askew v. Firestone, 421 So.2d 152 (Fla. 1982). Hence, this Court, in distilling standards for the single-subject requirement, has viewed the single-subject requirement as a "rule of restraint designed to insulate Florida's organic law from precipitous and cataclysmic change." Tax Limitation I, 644 So.2d at 490; see also, Advisory Opinion to the Attorney General Re: Fish & Wildlife Conservation Commission, 705 So.2d 1351, 1353 (Fla. 1998) ("Fish & Wildlife Commission"); Advisory Opinion to the Attorney General Re: Prohibiting Public Funding of Political Candidates' Campaigns, 693 So.2d 972, 975 (Fla. 1997) ("Prohibiting Public Funding of Campaigns") (viewing the single-subject requirement as a "rule of restraint.")

3. . . . . Oneness of purpose.

To meet the required oneness of purpose, the Court has applied the"functional" test articulated in Fine v. Firestone, 448 So. 2d 984 (Fla. 1984) ("Fine") to consider

whether the proposed amendment affects more than one function of government, affects unnamed other provisions of the Constitution, or alters or performs the functions of different branches of the government. The single-subject requirement merely compels a "logical and natural oneness of purpose." Fish & Wildlife Commission, 705 So.2d at 1353; Prohibiting Public Funding of Campaigns, 693 So.2d at 975; Advisory Opinion to the Attorney General–Fee on the Everglades Sugar Production, etc., 681 So.2d 1124, 1130 (Fla. 1996) ("Everglades Fee"). Moreover, this Court holds that "[a] proposed amendment meets this test when 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 Opinion to the Attorney General Re: Florida Locally Approved Gaming, 656 So.2d 1259, 1263 (Fla. 1995) ("Locally Approved Gaming"). And, this Court "has made it clear that the single-subject test is functional and not locational." Tax Limitation I, 644 So.2d at 490.

4. . . . . Guideposts for drafting.

Of equal importance, however, the standards articulated by the Court are guideposts for those who would attempt to draft petitions by which to amend the Constitution. The Petition was prepared based on this Court's decisions in Floridians Against and Limited Casinos and the other decisions of the Court referenced herein. In this role, it is uniquely important for the Court to maintain stability in the application

of its tests for one subject (and for ballot title and summary), since the Court fully expects that its guidelines will be read and followed.

B. The Petition embraces only one subject.

The subject of the Petition is to authorize slot machines within existing State-licensed pari-mutuel facilities, in counties where authorized by vote of the electorate.[1] There is no other subject in the proposed amendment, when viewed through the lens of "oneness of purpose."

C. The provision in the Petition which directs that the appropriation of tax revenue derived from slot machines be used to enhance senior citizen services, classroom construction, education programs, and teachers' salaries and benefits does not create a "logrolling" problem as the Attorney General contends.

The Attorney General contends that the provision which directs that the appropriation of tax revenue derived from slot machines be used for certain purposes

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[1]The Attorney General virtually concedes this when he says :

> 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.
>
> App. 1, at 4.

creates a "logrolling" problem. Specifically, the Attorney General argues:

> 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...(citations omitted). 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. [citations omitted]
>
> The proposed amendment limits the use of tax revenue derived from slot machines to the enhancement of "senior citizen services, classroom construction, education programs, and teachers' salaries and benefits." <u>The proposed amendment thus enfolds the disparate subjects of education and senior citizens</u>. 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.

App. 1, at 6-7(emphasis supplied)

The Attorney General here ignores the "matter directly connected therewith"

language of the single-subject requirement in Article XI, section 3. Further, in support of his position, the Attorney General cites In re Advisory Opinion to the Attorney General–Restricts Law Relating to Discrimination, 632 So.2d 1018 (Fla. 1994) ("Restricts Law Relating to Discrimination"), while ignoring the controlling nature of Floridians Against (which is not cited) and Limited Casinos (which is cited once, but its teaching then ignored).

Floridians Against is controlling as to single-subject. In Floridians Against, this Court approved a similar proposed amendment which authorized casino gambling and also issued directives for taxation and appropriations, and in so doing, explicitly rejected the same "logrolling" argument now raised by the Attorney General here. The Floridians Against amendment authorized the operation of privately owned gambling casinos within certain specified geographic limits in Florida. The Floridians Against amendment also specifically provided that the State would be required to collect taxes on the operation of gambling casinos, and appropriate those revenues to "the several counties, school districts and municipalities for the support and maintenance of the free public schools and local law enforcement." Floridians Against, 363 So.2d at 338.

The opponents in Floridians Against, like the Attorney General here, argued that the taxation and appropriation provision in the Floridians Against amendment created

a "logrolling" defect. This Court, however, was swayed neither by the fact that the Floridians Against amendment contained a provision that authorized casino gambling and another provision relating to taxation and appropriation, nor by the fact that this latter provision directed that appropriations be made to multiple political subdivisions for multiple uses, specifically "the support and maintenance of free public schools and law enforcement." Instead, this Court concluded that the taxation of casino gambling and the direction of the appropriation-resulting tax revenues to a variety of specified uses was "part and parcel of the single subject of legalized casino gambling." Specifically, this Court reasoned:

> Just as the Court in [Weber v. Smathers, 338 So.2d 819 (Fla. 1976)] 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 served to flesh out and implement the initiative proposal, thereby forging an integrated and unified whole.

Floridians Against, 363 So.2d at 340 (emphasis supplied)

This holding in Floridians Against has since been upheld and applied by this Court when faced with similar issues arising in other initiative petition decisions.[2]

[2]The language of the opinion in Floridians was broad and was receded from in Fine, 448 So.2d at 988-991 to the extent that Floridians had held: (i) that the single-subject rule of Article XI, section 3 and that of Article III, section 6 (pertaining to the

Carroll v. Firestone, 497 So.2d 1204 (Fla. 1986) ("Carroll"), upholding for submission to the electorate the petition for the Florida Lottery, expressly relied upon Floridians Against to reject a single-subject challenge. That proposed amendment both authorized the Lottery and specifically provided that "[n]et proceeds derived from the lotteries shall be deposited to a state trust fund, to be designated The State Education Lotteries Trust Fund, to be appropriated by the Legislature." Carroll, 497 So.2d at 1204. The Court upheld the proposed amendment as conforming to the single-subject requirement, concluding that the proposed amendment's provision for the collection of net proceeds and the creation of a fund was a "matter directly connected" to the one subject embraced:

> We see no essential distinction between the amendment here and the one we approved in [Floridians Against]. We recognize that in [Floridians Against] the taxes on casinos, assuming casinos were authorized and taxed, were committed to a specific purpose while here the revenues if any, are only tentatively committed to a specific fund. We do not consider this distinction significant and hold that subsection (c) contains matter directly connected to the authorization for lotteries, subsection (a).

Legislature) were the same; and (ii) that it was unnecessary to identify sections of the Florida Constitution impacted by the proposed amendment. However, Fine did not recede from Floridians in any respect that is material to the "logrolling" issue discussed here, and followed the functionality" test espoused in Floridians. This is clear in that Carroll, supra, was decided by this Court two years after Fine, and expressly relied on Floridians Against.

Carroll, 497 So.2d at 1206. (emphasis supplied)

In reaching this conclusion, the Court explained that the additional provision there at issue functioned as a typical (and permissible) contingency for the enactment of general law in connection with the central purpose of an amendment to the Florida Constitution:

> The clause, if adopted, reflects a decision by the voters to have the ultimate disposition of the proceeds received from lotteries, if established, to the discretion of the Legislature. Such delegation of authority to the legislative, executive, or judicial branches of government is not unusual or constitutionally infirm. Our Constitution consists in large part of a delegation of discretionary authority to the three branches of government and numerous provisions of the Constitution are contingent on general law.

Carroll, 497 So.2d at 1207;[3] see also, Limited Casinos, 644 So.2d at 74 (favorably citing Floridians Against in support of its holding that the provision directing that the "Legislature shall implement" in a proposed amendment authorizing limited casino gambling was "incidental and reasonably necessary to effectuate the purpose of the proposed amendment and [did] not violate the single-subject requirement.")

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[3]The Florida Lottery petition also contained a severability clause, as does the Petition. This Court held in Carroll that the severability clause did not violate the single-subject rule. Severability clauses were also included in other petitions approved by this Court. See, e.g., Advisory Opinion to the Attorney General – Limited Political Terms in Certain Elective Offices, 592 So.2d 225 (Fla. 1991); Fish and Wildlife Commission, 705 So.2d 1351 (Fla. 1998) (approved as to single-subject requirement only). The Petition likewise contains a severability clause.

"Use of revenues" provisions have also been approved as to petitions outside the gaming field. See Advisory Opinion to the Attorney General re Funding For Criminal Justice, 639 So.2d 972 (Fla. 1994) ("Funding For Criminal Justice") which considered a petition creating:

> . . . . the Criminal Justice Trust Fund which shall be funded by a tax of up to one percent on the sale of goods and/or services as provided by law. The Criminal Justice Trust Fund shall be subject to appropriation by the Legislature to fund prisons, juvenile detention facilities, and Florida's other criminal justice purposes; provided, however, that no such funds shall be used to replace or substitute funding at a level less than that allocated to the criminal justice system in the budget for the 1993-1994 fiscal year.

(at 973). The Court found this to be a "mandatory requirement for some funding up to one percent, although the legislature retains the discretion of determining how much" (at 974), and approved the petition, saying: "While the initiative creates a trust fund, the funding of the trust and allocation of the monies therein remains with the legislature" (at 973). To the same effect, see Everglades Fee, 681 So.2d at 1128 (Fla. 1996), approving a petition calling for imposition of a fee of one cent per pound of raw sugar "to be used for purposes of conservation and protection of natural resources and abatement of water pollution in the Everglades Protection Area and Everglades Agricultural Area..."

The Attorney General's "logrolling" argument based upon the provision

directing that appropriations from slot machine tax revenue be used to enhance "senior citizen services, classroom construction, education programs, and teachers' salaries and benefits" is indistinguishable from the "logrolling" argument that was considered and rejected in Floridians Against, as well as the Carroll, Funding For Criminal Justice, and Everglades Fee decisions. In fact, the directive on appropriations in the Petition appears to leave much more discretion in the Legislature than did the analogous taxation and appropriation provisions at issue in Floridians Against. "[E]nhancement of senior citizen services, classroom construction, education programs, and teachers' salaries and benefits" may refer to any number of programs, and, unlike the taxation and appropriation provision at issue in Floridians Against, there is no directive to appropriate revenue to any specified political subdivision. Therefore, under this Court's decisions, the taxation and appropriation provision in the Petition "may be logically viewed as having a natural relation and connection as [a] component part[] or aspect[] of a single dominant plan or scheme," and the Petition therefore comports with the single-subject rule. Locally Approved Gaming, 656 So.2d at 1263.

Restricts Law Relating to Discrimination, to which the Attorney General cites, is simply inapposite. That case involved a proposed amendment that (among a multitude of other problems), prohibited the adoption of any law by the state, political subdivisions, municipalities or other governmental entities that outlawed ten

enumerated different categories of discrimination, including, for example, discrimination based upon race, age, marital status or familial status. This Court concluded that the proposed amendment violated the single-subject requirement because the voter was essentially being asked to give one answer to ten questions. Each category of discrimination in that amendment was unrelated to the other, and was one of an almost limitless number of possible categories that voters might or might not want to be the subject of anti-discrimination laws. Here, on the other hand, the appropriations provision is clearly tied to the Petition's central purpose of authorizing county referenda permitting slot machines in pari-mutuel facilities.

D. The provision allowing each county's governing body to authorize a referendum on whether to approve or disapprove slot machines within the county's jurisdiction, in addition to requiring the Legislature to license, regulate and tax slot machines and directing the appropriations to particular purposes, does not undermine the single-subject requirement as the Attorney General suggests it might.

The Attorney General also suggests that the Petition does not meet the single-subject rule because it allows each county's governing body to authorize a referendum on whether to approve or disapprove slot machines within the county's jurisdiction. But this question is equally dealt with, contrary to the Attorney General's suggestion, by prior decisions of the Court which mandate that the Petition be upheld as

conforming to the single-subject requirement. First and foremost, in Locally Approved Gaming, supra, this Court approved a proposed amendment which authorized privately owned casinos at certain venues and which, in two additional provisions, specified:

> (b) Each county, but only as to the unincorporated area within its boundary, or municipality, by a vote of its governing body, may at any time after the effective date of this section authorize gaming within its jurisdiction as provided by this section.
>
> ***
>
> (d) By general law enacted no later than July 1, 1995, the legislature shall implement this section with legislation to license, regulate and tax gaming.

Locally Approved Gaming, 656 So.2d at1261. (Emphasis supplied)

Locally Approved Gaming explicitly rejected an argument under the single-subject requirement similar to the one made by the Attorney General here:

> [T]he Attorney General states that the proposed amendment violates the single-subject rule because it 'encroaches on the powers of local and state government by substantially preempting the regulatory or land use functions of state and local government.' The Governor and Cabinet echo these assertions in their brief. These assertion are essentially the same arguments raised in [Limited Casinos]. We reject these arguments for the same reasons expressed in [Limited Casinos].

Id. at 1263.

There is no distinction between the proposed amendment in Locally Approved Gaming and the Petition here for purposes of this "question" of the Attorney General. The Petition allows the governing body of each county to commence the referendum process which is already an aspect of such body's governing authority, and it also directs state-level taxation and appropriations of any slot machine revenue that may be generated in the event slot machines are permitted in a county's eligible pari-mutuel facilities through the referendum process. Thus, the Petition does nothing to "alter" or even "perform" the function of multiple branches of government. This Court has been explicit that "a proposed amendment can meet the single-subject requirement even though it affects multiple branches of government." Monorail, 769 So.2d at 371. In fact, it is "difficult to conceive of a constitutional amendment that would not affect other aspects of government to some extent." Id.

The mere fact that the taxation and appropriations provision here is more specific than the more general implementation language in Locally Approved Gaming is of no moment. Taxation and appropriations are functions of the Legislature, and the mere fact that a specification of multiple uses is made does not render a proposed amendment non-conforming to the single-subject requirement.

II. The Ballot Title And Summary Give Fair Notice Of The Content, And Accurately Reflect The Chief Purpose Of The Proposed Amendment.

A. Ballot title.

The only portion of the Petition to which the Attorney General has no objection is its title: AUTHORIZATION FOR COUNTY VOTERS TO APPROVE OR DISAPPROVE SLOT MACHINES WITHIN EXISTING PARI-MUTUEL FACILITIES.

B. Ballot summary.

The Attorney General has several problems with the ballot summary, saying:

> 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." 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 requirement 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.
>
> ...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.*
>
> * 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.

App. 1, at 4-5, 8.

Section 101.161, Fla. Stat., mandates:

> [T]he "substance of [a proposed amendment to the Florida constitution] . . . shall be printed in clear and unambiguous language on the ballot . . . followed by the word 'yes' and also by the word 'no,' and shall be styled in such a manner that a 'yes' vote will indicate approval of the proposal and a 'no' vote will indicate rejection. . . [T]he substance of the amendment shall be an explanatory statement not exceeding 75 words in length, or 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.

Section 101.161(1) thus requires an explanatory statement of the "chief purpose" of the proposed amendment, in not more than 75 words. That the title and the summary adequately explain the "chief purpose" is conceded by the Attorney General. The requirement that the summary provide fair notice of the meaning and effect of the proposed amendment (Advisory Opinion to the Attorney General Re: Stop Early Release of Prisoners, 661 So. 2d 1204, 1206 (Fla. 1995) ("Stop Early Release") is thus conceded.

Nevertheless, the Attorney General attacks the summary for:

(i) Misstating the fact that the 2/3 approval requirement of Article XI, section 7 of the Constitution will not apply to the proposed amendment;

(ii) Failing to make clear that the county commission of a specific county may not call a referendum, so that the voters of that county may not actually have a chance to vote to have slot machines at pari-mutuel facilities in that county;

(iii) Failing to make clear whether the slot machines will operate when the pari-mutuel operations are not.

(iv) Failure to put in the summary that a negative local option vote will preclude a revote for two years;

(v) Failure to put in the summary that no slot machines can be introduced before July 1, 2003;

(vi) Failure to define the meaning of slot machines[4]; and

(vii) Failure to make clear that only operation of slot machines is intended rather than manufacture of them.

The Court has said over and over again, however, that a summary need not recite in detail every feature and aspect of the proposed amendment. e.g., Prohibiting Public Funding of Campaigns, 693 So.2d at 975 ("[T]he title and summary need not explain every detail or ramification of the proposed amendment."); Advisory Opinion to the Attorney General Re: Tax Limitation, 673 So.2d 864, 868 (Fla. 1996) ("Tax Limitation II") ("[T]he ballot summary is not required to include all possible effects..., nor to 'explain in detail what the proponents hope to accomplish'"; Limited Casinos, 644 So.2d at 75 ("The seventy-five word limit placed on the ballot summary as required by statute does not lend itself to an explanation of all of a proposed amendment's details."). As in the other areas of initiative analysis, no invalidation is possible unless the summary is "clearly and conclusively defective." Florida League of Cities v. Smith, 607 So. 2d 397, 399 (Fla. 1992).

The objections of the Attorney General are readily overcome. The Petition provides for the Legislature to license and regulate the slot machine operations. Such

[4]Section 849.16, Fla. Stat., defines a slot machine.

licensing and regulation will answer nearly all of the Attorney General's objections.[5] Only the Attorney General's contention that the statement that the 2/3 approval requirement of Article XI, section 7 does not apply is misleading, warrants further analysis and discussion.

The Petition states that the 2/3 approval requirement of Article XI, section 7 would not apply to taxation of the slot machine revenue. As the Attorney General correctly observes, Article XI, section 7 by its own terms would not apply to the Petition. Thus, this statement need not have been put in the proposed amendment by initiative petition (and summarized in the summary) at all. However, the proponents believed that the electorate was entitled to know that a provision of the Constitution inserted by electoral approval of a 1996 initiative petition just five years ago would not apply. It is certainly true that an analysis of this Court's advisory opinion approving the 1996 initiative petition would make clear that the 2/3 approval would not apply to taxation of pari-mutuels by the Legislature under the Petition, but it is equally true that the electorate cannot be presumed to read such advisory opinions of this Court, much less the briefs of proponents and opponents filed in this Court on the issue.

III. Article XI, Section 7 Of The Constitution Does Not Apply To

[5]As noted in fn. 2, the Legislature had already resolved one of the Attorney General's questions.

Taxation Of Slot Machines In Pari-Mutuel Facilities Possible By Reason Of The Petition

Article XI, section 7 was added to the Constitution by the initiative petition entitled: "Tax Limitation: Should Two-Thirds Vote be Required for New Constitutionally-Imposed State Taxes/Fees?" That initiative petition was approved by this Court in Tax Limitation II, 673 So.2d 864 (Fla. 1996), but had been previously considered two years earlier in Tax Limitation I.

Tax Limitation I involved four constitutional proposals. The Tax Limitation II amendment was the first of the four, and is identical in all respects to that approved by this Court in 1996. This is because the fourth of the four Tax Limitation I proposals removed the single-subject limitation as to amendments by initiative petition which would be revenue-producing. That proposal was the only one this Court permitted to go to the electorate in Tax Limitation I, the voters approved that amendment, and so the proponents simply reasserted the same proposed amendment, the signatures still being valid.

In Tax Limitation I, the Court struck down the proposed amendment under Fine as applying to both taxes and fees, which Fine had explicitly said were two different subjects. In Tax Limitation II the Court reconsidered this proposed amendment without the single-subject rule being applicable. The only issue then was compliance

with Section 101.161, Fla. Stat., as to summary and title. The title of the proposed amendment made clear the proposal was directed to "constitutionally-imposed state taxes/fees." Its summary said that it "[p]rohibits imposition of new State taxes or fees...by constitutional amendment," unless with 2/3 voter approval (emphasis supplied). The Court upheld the provision. It said:

> Furthermore, the Attorney General contends this ballot title may be misleading because it refers to "constitutionally imposed" taxes of fees:
>
> The title refers to "constitutionally imposed" state taxes or fees. The voter may be unsure as to whether the amendment affects only new taxes or fees that are imposed by the Florida Constitution or whether it also extends to taxes or fees imposed by the Legislature since a legislatively created tax is, in fact, imposed pursuant to the authority granted to the Legislature by the Constitution.
> The Attorney General argues, in effect, that all taxes, including those imposed by the Florida Legislature, must be "constitutional," as opposed to "unconstitutional," in order to be implemented, and, consequently, the ballot title suggests a broader scope than the text of the amendment allows.

673 So.2d at 867. The Court rejected this contention, noting the title is to be read together with the summary and "the ballot summary clearly explains that the taxes and fees targeted by the Tax Limitation petition are those imposed 'by constitutional amendment.'" Id. at 868. The Court concluded:

> ...the ballot title and summary clearly inform voters that the

> chief purpose of the amendment is to require a two-thirds majority vote of the electorate for any tax or fee which is imposed by a constitutional amendment...The terms of the ballot title and summary clearly convey that if the tax or fee in question is not imposed by constitutional amendment (as would be the case if the tax or fee were legislatively imposed), then a two-thirds vote of the electorate is not required.

Id. (emphasis supplied)

The Court's reading of the amendment followed that of both its proponents and opponents.[6]

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[6]The principal proponent was "Tax Cap Committee." Florida Tax Watch acted as a proponent as well. Tax Cap Committee said:

> The Tax Limitation petition is intended to have a narrow scope, applying only to proposed constitutional amendments that themselves impose a new state tax or fee, such as the one the Court struck from the ballot last year. Initial Brief at 2.
> ...
> If the tax or fee is not imposed by a constitutional amendment, then a two-thirds vote is not required...the Tax Limitation petition would apply to any constitutional amendment that mandates assessment of a specified state tax or fee . . . and leaves no discretion to the Florida Legislature. It would not extend to a constitutional amendment that merely authorizes, permits, or purports to "require" the legislature to impose a tax or fee, but leaves the amount and other details to the legislature's discretion. If the legislature itself implemented such a new state tax or fee, it would be a legislatively-imposed tax or fee and not a "tax or fee imposed on

The drafters of the Petition here before the Court could have ignored the whole issue, since the only tax here contemplated is to be legislatively enacted. However, they deemed it necessary to specifically advise the electorate that the special 2/3 approval provision enacted only five years ago into the Constitution was inapplicable to revenue

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> or after November 8, 1994 by any amendment to this constitution." Initial Brief at 16-17.

Florida Tax Watch added:

> The average voter will understand that if a <u>new</u> tax is going to be imposed via a constitutional amendment, it must be approved by two-thirds of those voting in the election. It is that simple. The proposed amendment does <u>not</u> apply to existing taxes or fees or legislatively, as opposed to constitutionally, imposed taxes or fees. (Initial Brief at 15)...The legislature and the tax and budget reform commission are unlikely to <u>impose</u> a new tax or fee through constitutional amendment. They have not done so in the past and they are unlikely to do so in the future....The legislature would pass a statute if it wanted to enact a new tax (Reply Brief at 5-6).

The opponents concurred:

> ...an ancillary effect of the Tax Limitation amendment's new restriction on popular sovereignty may be to limit governmental power to raise revenue that might be granted through constitutional amendment (though not by any other means, including simple statute)...

Brief at 8.

generated from slot machines. The electorate could not be presumed to understand the intricacies of what is and what is not constitutionally imposed, since any revenue of the State derived from taxation of slot machines would occur by reason of the constitutional amendment (adoption of the Petition by the electorate). The proponents of the Petition should not be faulted for telling the electorate the truth--that the 2/3 requirement does not here apply.

Finally, the Attorney General has suggested that the 2/3 provision for constitutionally imposed taxes adopted by a majority of the electorate could not be eliminated as to a specific constitutionally imposed tax imposed by a subsequent amendment. But the Attorney General makes no efforts to explain why one electoral majority should not be permitted to reverse another electoral majority. However, that issue need not be reached since any taxes hereunder are not constitutionally imposed.

IV. The Ballot Title and Summary Easily Meet The Requirements Of Section 101.161(1), Fla. Stat.

This Court has crystallized this statutory language to mean that a ballot title and summary must be drafted "so the voter will have fair notice of the content of the proposed amendment, will not be misled as to its purpose, and can cast an intelligent and informed ballot." Advisory Opinion to the Attorney General Re: Stop Early Release of Prisoners, 661 So.2d 1204, 1206 (Fla. 1995). It is beyond question that the

ballot and title summary at issue comply with these principles and meet the requirements of Section 101.161(1), Fla. Stat.

A. The ballot title and summary clearly provide fair notice to the voters of what they would be voting for with a "yes" vote or against with a "no" vote.

The actual effect of a "yes" vote for the proposed amendment at issue would be that the voter so voting assents to each county in Florida having the power, through its governing body, to hold a county referendum wherein voters within that county may approve or disapprove the operation of slot machines in eligible pari-mutuel facilities within that county from which legislatively authorized tax proceeds would be used to enhance senior citizen and education programs. The actual effect of a "no" vote for the proposed amendment would mean that a voter refuses to extend such power to each county.

This title and summary thus place each voter on "fair notice" of the actual effect of a "yes" and a "no" vote, and a voter certainly "will not be misled as to [the proposed amendment's] purpose, and each voter therefore "can cast an intelligent and informed ballot."

Each voter may reasonably be presumed to know what pari-mutuel facilities are and what slot machines are (Article VII, section 7 of the Constitution refers to pari-mutuel taxation, and the Legislature has defined what slot machines are), and that the

operation of slot machines at pari-mutuel facilities is presently not authorized by general law. Limited Casinos, 644 So.2d at 75 ("We are confident that the public knows that casino gambling is now prohibited and will understand that the effect of the amendment would be to permit casino gambling subject to the limitations contained therein.")

B. The ballot title and summary reference to the fact that the proposed 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" are not misleading in that the actual proposed amendment does just that, even if that aspect of the actual proposed amendment may be superfluous.

Even though the reference to Article XI, section 7 in the actual proposed amendment may be legally superfluous, the language is totally accurate. The mere fact the proposed amendment may include a provision that is superfluous in no way diminishes the accuracy of the summary. In Locally Approved Gaming, the Court held the inclusion of an already past deadline for the enactment of general law to implement locally approved gaming did not void the proposed amendment because that provision "did not affect the substantive provisions of the proposed amendment requiring the Legislature to implement the proposal." 656 So.2d at 1264. If inclusion of an "impossible" term does not create ambiguity, certainly inclusion of a

"superfluous" one does not.[7]

CONCLUSION

For the reasons stated herein, this Court should find the Petition fully meets the requirements of Article XI, section 3, Fla. Const., and of Section 101.161, Fla. Stat., for submission to the electorate.

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[7]In Ray v. Wortham, 742 So. 2d. 1276 (Fla. 1999), this Court dealt with the impact on the constitutional provision created by the Term Limits initiative of the United States Supreme Court's subsequent determination that the constitutional provision was invalid under the federal constitution insofar as it purported to impact federal offices. This Court concluded that the provision remained valid although it is not in effect as to a portion of its language. Certainly a determination that the language stating the 2/3 requirement of Article XI, section 7 was unnecessary or superfluous would not be grounds for voiding the Petition in light of Ray v. Wortham.

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Counsel for Floridians for a Level Playing Field

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed via U.S. Mail this 23rd day of June, 2001 to the following:

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CERTIFICATE OF FONT

I HEREBY CERTIFY this brief has been printed in scalable Times New Roman 14 point type, in accordance with Rule 9.210(a)(2), Fla. R. App. P.

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APPENDIX