

Slot Machines in Parimutuel Facilities

Number: PETITION

Date: June 02, 2003

The Honorable Harry Lee Anstead
Chief Justice, and
Justices of The Supreme Court
of Florida
The Supreme Court Building
Tallahassee, Florida 32399-1925

Dear Chief Justice Anstead 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 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 May 5, 2003, this office received from the Secretary of State an initiative petition seeking to amend the Florida Constitution to authorize Miami-Dade and Broward County voters to approve slot machines in existing parimutuel facilities. The full text of the proposed amendment states:

"Article X, Florida Constitution, is hereby amended to add the following as section 19:

SECTION 19. SLOT MACHINES -

(a) After voter approval of this constitutional amendment, the governing bodies of Miami-Dade and Broward Counties each may hold a county-wide referendum in their respective counties on whether to authorize slot machines within existing, licensed parimutuel facilities (thoroughbred and harness racing, greyhound racing, and jai-alai) that have conducted live racing or games in that county during each of the last two calendar years before the effective date of this amendment. If the voters of such county approve the referendum question by majority vote, slot machines shall be authorized in such parimutuel facilities. If the voters of such county by majority vote disapprove the referendum question, slot machines shall not be so authorized, and the question shall not be presented in another referendum in that county for at least two years.

(b) In the next regular Legislative session occurring after voter approval of this constitutional amendment, the Legislature shall adopt legislation implementing this section and having an effective date no later than July 1 of the year following voter approval of this amendment. Such legislation shall authorize agency rules for implementation, and may include provisions for the licensure and regulation of slot machines. The Legislature may tax slot machine revenues, and any such taxes must supplement public education funding statewide.

(c) If any part of this section is held invalid for any reason, the remaining portion or portions shall

be severed from the invalid portion and given the fullest possible force and effect.

(d) This amendment shall become effective when approved by vote of the electors of the state."

The ballot title for the proposed amendment is "AUTHORIZES MIAMI-DADE AND BROWARD COUNTY VOTERS TO APPROVE SLOT MACHINES IN PARIMUTUEL FACILITIES." The summary for the proposed amendment states:

"Authorizes Miami-Dade and Broward Counties to hold referenda on whether to authorize slot machines in existing, licensed parimutuel facilities (thoroughbred and harness racing, greyhound racing, and jai alai) that have conducted live racing or games in that county during each of the last two calendar years before effective date of this amendment. The Legislature may tax slot machine revenues, and any such taxes must supplement public education funding statewide. Requires implementing legislation."

SINGLE SUBJECT LIMITATION

Section 16.061, Florida Statutes, requires the Attorney General 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."

An initiative petition similar to the one now before this Honorable Court was considered in *Advisory Opinion to the Attorney General--Authorization for County Voters to Approve or Disapprove Slot Machines Within Existing Pari-Mutuel Facilities*, 813 So. 2d 98 (Fla. 2002).[1] In that opinion, this Court held that a provision for local authorization to approve slot machines and a mandate that such slot machines be licensed and taxed for a particular purpose could not be combined in a single initiative:

"The initiative considered here purports to create a mechanism for authorizing and taxing slot machines for a particular purpose in the same proposal which would effectively amend article XI, section 7, to remove this new state tax from the ambit of that provision. Because it thus fails to comport with the constitution's single subject limitation, it is disapproved for inclusion on the ballot."

813 So. 2d at 102.

In the initiative petition now under consideration by this Court, the amendment authorizes but does not mandate the imposition of a tax, nor does it exempt the amendment from the provisions of Article XI, section 7, Florida Constitution. While the amendment requires implementing legislation authorizing agency rules for implementation, such legislation *may* include provisions for the licensure and regulation of slot machines and the Legislature *may* tax slot machine revenues.

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

BALLOT TITLE AND SUMMARY

Section 16.061, Florida Statutes, requires the Attorney General 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 wording of 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 title and ballot summary appear to reflect the purpose of the proposed amendment, *i.e.*, to allow the voters of Miami-Dade and Broward Counties to authorize slot machines at existing

parimutuel facilities and to require the Legislature to adopt implementing legislation. In *Advisory Opinion to the Attorney General—Authorization for County Voters to Approve or Disapprove Slot Machines Within Existing Pari-Mutuel Facilities*, 813 So. 2d 98 (Fla. 2002), the Court held that the summary of the initiative was defective because the statement of the inapplicability of Article XI, section 7, Florida Constitution was incorrect and therefore misleading. As noted above, the current initiative does not refer to Article XI, section 7, Florida Constitution, and does not mandate the imposition of a tax, although it authorizes the Legislature to adopt such a tax.

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.

Sincerely,

Charlie Crist
Attorney General

CC/tgk

cc: Ms. Glenda Hood
Secretary of State

The Honorable Jeb Bush
Governor, State of Florida

The Honorable James E. "Jim" King
President, Florida Senate

The Honorable Johnnie Byrd
Speaker, Florida House of Representatives

Mr. Daniel K. Adkins
Chairperson, Floridians for a Level Playing Field

[1] The proposed amendment to Article X, Florida Constitution, considered by the Court in *Advisory Opinion to the Attorney General—Authorization for County Voters to Approve or Disapprove Slot Machines Within Existing Pari-Mutuel Facilities*, 813 So. 2d 98, 99-100 (Fla. 2002), provided:

"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."