April 16, 2019

The Honorable Bill Galvano, President, Florida Senate
The Honorable Jose Oliva, Speaker, Florida House of Representatives
Tallahassee, FL 32399

VIA ELECTRONIC MAIL

Dear President Galvano and Speaker Oliva:

As you are aware, during the last election Florida voters overwhelmingly approved Amendment 3. Amendment 3, now Article X, Section 30 of the Florida Constitution, *"ensures that Florida voters shall have the exclusive right to decide whether to authorize casino gambling in the State of Florida."* It defines casino gambling as anything that falls under the definition of Class III gaming of the Federal Indian Gaming Regulatory Act (IGRA), as well any game, electronic or otherwise, that simulates any Class III game, including *"any player-banked game that simulates a house banking game."*

IGRA's definition of Class III gaming includes *"Any sports betting…"*

Article X, Section 30 of the Florida Constitution holds that the Florida Legislature can neither authorize casino gambling, nor even propose it to the voters. Any authorization or expansion of casino gambling in the state must be authorized by citizen initiative.

Amendment 3 provides a single exception in order for it to not conflict with federal law. That exception states, *"nothing herein shall be construed to limit the ability of the state or Native American tribes to negotiate gaming compacts pursuant to the Federal Indian Gaming Regulatory Act for the conduct of casino gambling on tribal lands, or to affect any existing gambling on tribal lands pursuant to compacts executed by the state and Native American tribes pursuant to IGRA."*

Since commencement of the legislative session there have been a number of statements and rumors regarding gambling legislation that may come forward during the upcoming session. Gambling industry lawyers have advanced a number of dubious legal theories and bogus interpretations on how Amendment 3 applies to certain forms of gambling.

To clear matters up, we retained a legal expert to analyze how Amendment 3 applies to three different policy questions. Two of these questions have already been the topic of considerable discussion, and we anticipate the third may arise at some point in the future. Paul Hawkes is an attorney, former Legislator, former Constitution Revision Commissioner (1997-1998) and a former member of the First District Court of Appeals. We asked him to render an opinion on and provide analysis regarding three questions:

1. Can the Florida legislature authorize 'sports betting' as other states have done since the U.S. Supreme Court's holding in *Murphy v. National Collegiate Athletic Ass'n,* 138 S.Ct. 1461 (2018)?

2. Are "designated player games" permissible in Florida without a prior citizen initiative authorizing the games?

3. Are current permit holders who are authorized to operate slot machines in certain facilities in Miami-Dade and Broward counties able to obtain either legislative or administrative authority to move their slot machine permits to other locations?

His findings?

"I interpreted your questions as an inquiry concerning permissible governmental actions or authority outside the context of those games provided for by gaming compacts pursuant to the Federal Indian Gaming Regulatory Act for the conduct of casino gambling on tribal lands. As limited, for the reasons set forth below, my answer to each question is no."

His thirteen-page analysis is attached, which concludes:

> *The design of Amendment 3 and the voters' intent in overwhelmingly enacting it is clear – that voters, not elected officials - "shall have the exclusive right to decide whether to authorize casino gambling in the state of Florida." The conclusions provided herein are not in any way new or novel. They are consistent with discourse of the campaigns for and against Amendment 3, and the campaign in favor of 2004's Amendment 4 legalizing slot machines "within existing, licensed pari-mutuel facilities."*
>
> *These issues have already been litigated in the court of public opinion. In 2018, a multi-million dollar campaign effort by sports gambling and pari-mutuel interests opposing Amendment 3 provided considerable accurate context about how Amendment 3 would effect sports gambling and player-designated games. The intent of the voters was informed by numerous statements that create a record to which courts can turn to for an understanding of what voters understood the amendment to do.*
>
> *Amendment 3 is a self-executing, voter ratified provision of the Florida Constitution and therefore has the full force of law. There is likely no shortage of potential plaintiffs who would have standing to challenge any attempt by the Legislature to overstep the very narrow discretion that Amendment 3 allows it to retain.*

The intent of Florida voters is clear and must be respected. A number of rumored expansion scenarios fall outside of the narrow discretion and narrow exception provided in Amendment 3.

The message sent by 71% of Florida voters who supported Amendment 3 couldn't be clearer. They don't want gambling expanded by legislative fiat. They want voters in charge. And by their vote, that is the law of Florida today. Florida's Constitution now requires that the desires of gambling interests be subordinate to the will of the people. Any legislation on this matter should respect this mandate.

Sincerely,

John Sowinski

CC The Honorable Ron DeSantis, Governor

PAUL M. HAWKES

Attorney-at-Law

John Sowinski
No Casinos, Inc.
P.O. Box 3427
Orlando, Florida 32802

RE: Amendment 3

Dear Mr. Sowinski,

You have asked for a legal opinion regarding the impact of Amendment 3 to the Florida constitution. Amendment 3[1], as the Florida Supreme Court recognized, requires all "'casino gambling,' as defined by the proposal, to be authorized *only* through the citizens' initiative process." *Advisory opinion to the Attorney General RE: Voter control of gambling in Florida*, 215 So.3d 1209 (Fla 2017) (Emphasis added).

You have presented three questions. The questions are, following the adoption of Amendment 3:

1. Can the Florida legislature authorize 'sports betting' as other states have done since the U.S. Supreme Court's holding in *Murphy v. National Collegiate Athletic Ass'n*, 138 S.Ct. 1461 (2018)?

2. Are "designated player games" permissible in Florida without a prior citizen initiative authorizing the games?

3. Are current permit holders who are authorized to operate slot machines in certain facilities in Miami-Dade and Broward counties able to obtain either legislative or administrative authority to move their slot machine permits to other locations?

I understand your questions as an inquiry concerning permissible governmental actions or authority outside the context of those games provided for by gaming compacts pursuant to the Federal Indian Gaming Regulatory Act for the conduct of casino gambling on tribal lands. As limited, for the reasons set forth below, my answer to each question is no.

3785 Wentworth Way
Tallahassee, Florida 32311

850.212.3067
Hawkes.paul@gmail.com

All Casino Gambling Must be Approved By Voters Article X, Section 30(a)

Amendment 3, which is now Article X, Section 30, grants all authority to create or expand (expansion is creation) 'casino gambling,' as defined in Article X, Section 30(b), exclusively to the voters through a singular path - that of a constitutional amendment enacted through the citizen initiative process described in Article XI, section 3. (voter approval). *Advisory Opinion to the Attorney General Re: Voter Control of Gambling,* 215 So.3d 1209 (Fla. 2017) The legislature is deprived of all authority to authorize or expand any form of 'casino gambling.' Likewise, the legislature may not propose to the voters a constitutional amendment authorizing or expanding casino gambling.

Question 1 – Sports Betting

1. Can the Florida legislature authorize 'sports betting' as other states have done since the U.S. Supreme Court's holding in *Murphy v. National Collegiate Athletic Ass'n,* 138 S.Ct. 1461 (2018)?

Summary

No. Sports betting is included within Article X, section 30(b)'s definition of 'casino gambling' and, as a consequence, can only be allowed in Florida if the voters approve it by citizen initiative.

All sports gambling falls under Amendment 3's definition of sports betting

Article X, section 30(b) defines the forms of gaming activity subject to voter approval. Without dispute the legislature is without power to authorize any form of gaming activity, including sports betting, if it falls within the definition of 'casino gambling.' The Florida Supreme Court teaches that "[t]he fundamental object to be sought in construing a constitutional provision is to *ascertain the intent of the framers* and the provision must be construed or interpreted in such manner as to *fulfill the intent of the people,* never to defeat it. Such a provision must never be construed in such manner as to make it possible for the will of the people to be frustrated or denied." *Zingale v. Powell,* 855 So.2d 277 (Fla. 2004) citing *Gray v. Bryant,* 125 So.2d 846, 852 (Fla.1960). The only way to 'fulfill the intent of the voters' is to "to give effect to every clause in it and to accord meaning and harmony to all of its parts." *Larimore v. State,* 2 So.3d 101, 106 (Fla.2008). Giving 'effect to every clause' and seeking 'harmony' to all of Article X, section 30(b), the legislature is left with virtually no field of operation in which to authorize any new or expanded gaming that falls under Amendment 3's definition of casino gambling, including sports betting.

The definition of 'casino gambling' contains 250 words, of which 231 words are devoted to expanding the covered activity of the amendment or ensuring the inclusion of gaming activities within the amendment's reach. Besides including games typically found in casinos, the definition adopts by reference all class III[2] gaming activities under the Federal Indian Gaming Regulatory Act (IGRA), both at the time of adoption and, also, any future gaming activity the federal government may decide to include within class III. The definition specifically includes any banking games, whether they are player or house banked games, prohibiting all slot machines that are not specifically permitted (slot machines at certain facilities in Miami-Dade & Broward counties) and clarifies that the definition includes all these activities in what ever form they may be offered (electronic, simulated, video lottery devices, internet sweepstakes devices, and any other form of electronic or electromechanical facsimiles).

The 30(b) definition includes almost all gaming activity in the scope of its language. The included activity may be specifically listed, ('casino games such as roulette [or] craps,') or the activity may be included because it qualifies as a type of activity described by the definition. ('house banking games such as baccarat') The language found in the definition clearly intends to include significant gaming activity not listed. This fact is demonstrated by such phrases as 'included but not limited to' 'includes any', and use of the phrase, 'regardless of how.' The scope of the definition is so expansive that there are nine uses of the word 'any' and two uses of the phrase 'such as.' This broad language establishes the voters' intention to include virtually all forms of gaming, except those specifically exempted.

Section 30(b)'s scope may include an activity within its definition under several of the provisions or, perhaps, may include the activity within its definition by only a single provision. The result is the same – if an activity is included by any of the provisions, more than one of its provisions, or all of its provisions, the activity is subject to voter control. Isolating a single provision and arguing an activity does not fit within the reach of that single provision would not exempt the activity from voter control, unless the activity could be shown to fall outside all of its provisions.

Whereas inclusions of activities within the definition are broad and general in nature, every instance of an exclusion of an activity from the 30(b) definition is specifically identified. The definition of included activity is so broad, and the exceptions are so specific and limited, that in any conceivable situation, anyone seeking to claim an exemption from voter control would have to prove they qualified under one of the identified exemptions:

- Article X, section 15, the Florida Lottery;
- Article X, section 23, slots at existing pari-mutuel facilities in Miami-Dade and Broward Counties;

- Historically authorized pari-mutuel gaming –wagering on horse racing, dog racing, (now prohibited after 2020) or jai alai exhibitions; or
- Any activity defined as class I[3] or class II[4] gaming under IGRA.

Other than these limited, and clearly defined exclusions, every other gaming activity is included in the section 30(b) definition and, thus, would be subject to voter control.

Sports betting is not one of the exclusions, and it is undeniably a class III gaming activity under IGRA (it is specifically listed as an example of class III activity within IGRA). Therefore, the voters, through a citizens' initiative, must approve sports betting, before it may be authorized in Florida.

Amendment 3's Opponent's Argument in Favor of Legislative Control Over Sports Betting

To avoid the inclusion of sports betting in section 30(b)'s definition of 'casino gambling', some have attempted to argue, that part of the first sentence of the definition sets up two conditions that must be both met before any gaming activity would be subject to voter control. The proponents of this argument say that only gaming activities that are both typically found in casinos AND that fall within class III gaming under IGRA, qualify under this part of the 30(b) definition.

This construction of section 30(b) requires an inconsistent interpretation and fails to consider the expansive scope of the remainder of the definition, thus defeating the voters' expressed intent to be very expansive in the activity subject to voter control.

The first sentence reads: "'[C]asino gambling' means any of the types of games typically found in casinos *and* that are within the definition of Class III gaming in the Federal Indian Gaming Regulatory Act, . . . upon adoption of this amendment, *and* any that are added to such definition of Class III gaming in the future." (emphasis added) Three clauses – each connected with 'and' – comprise the scope of covered games:

(1) Types of games generally found in casinos; and
(2) All games within the definition of class III gaming under IGRA; and,
(3) Any game added in the future to as class III under IGRA.

Proponents of legislative control of sports betting use a sentence construction where the first 'and' serves to combine the first two clauses into two prerequisites that must both be satisfied before the activity would be included in the 30(b) definition. But, the sentence's second 'and' is interpreted differently as creating an additional activity that would be included in the 30(b) definition.

For the proponents of this argument to be correct they must, at a minimum, be consistent in how they interpret the first sentence. No rules of construction support the first 'and' being interpreted as linking clause 1 and clause 2 into two prerequisites that must both be met prior to including an activity within section 30(b)'s scope, and then either ignore the second 'and' or interpret it differently as serving a serial function, creating a separate type of activity that would be included within section 30(b)'s scope. Either the word 'and' links each of the three clauses as separate prerequisites that must all be true for the activity to be included within 30(b)'s definition, or the word 'and' serves a serial function separating three clauses that create three separate types of activity that qualify under the section 30(b) definition.

Consistency of interpretation of the word 'and' destroys the proponent's argument. If the word 'and' serves as creating three prerequisites, then no activity would be included within the 30(b) definition. To do so would require some future congressional action to add an additional activity as class III. To satisfy the third clause - 'game added in the future to as class III' - the amendment would be of no effect until a new class III gaming activity was defined. Because class III is defined by what it is not – any activity not class I or class II - the only way future activity could be added would be to narrow class I or class II activities. Even if that took place, it would be reasonable to assume that you would not find those activities in a casino.

However, this interpretation would result in the amendment accomplishing nothing. Rules of construction require courts to follow the general rule that the voters did not intend to enact a useless amendment. *Unruh v. State*, 669 So.2d 242, 245 (Fla. 1996). Interpreting the word 'and' as creating a list of three different ways an activity would be included in the 30(b) definition (which is the only interpretation that gives meaning to each phrase) results in sports betting requiring a citizens' initiative before it could be legal in Florida.

An interpretation of the first sentence where the word 'and' is given a consistent meaning and creates a serial list of three separate and distinct activities that are included within 30(b) gives effect to every phrase and creates a 'harmonious whole':

1. Any activity that is commonly found in a casino; and
2. Any activity that falls within the definition of IGRA class III; and
3. Any activity that in the future is added to the definition of IGRA class III.

Typically Found in Casinos *And* Class III
Violates Court Rules of Construction

Even if the consistent interpretation of the word 'and' throughout the first sentence is not required, the proponents' argument still violates basic rules of construction. They argue that an activity must be both – 'typically found in casinos' - and also class III gaming under IGRA. This argument, if true, would have to apply to every covered activity. Because class III is everything not class I or class II gaming activity, the

second condition, 'class III under IGRA,' is meaningless because casino gaming is almost always class III. If the voters only wanted to include traditional casino gaming activities within the 30(b) definition (which is the practical consequence of this interpretation), they accomplished it with just the first phrase. The second clause, if it serves as an additional prerequisite, does not give any significant effect – because it would be a truism. The converse is not true. Many gaming activities are class III, but are not found in casinos.

When engaged in the task of discerning the meaning of a text, courts do " 'not look merely to a particular clause in which general words may be used, but will take in connection with it the whole . . . . ' *Quarantello v. Leroy,* 977 So.2d 648 (Fla. 5th DCA 2008). (citation omitted). A constitutional provision must be construed to give "effect to every provision and every part thereof." *Benjamin v. Tandem Healthcare, Inc.,* 998 So.2d 566 (Fla. 2008), *Dep't of Envtl. Prot. v. Millender,* 666 So.2d 882, 886 (Fla.1996) ("[E]ach subsection, sentence, and clause must be read in light of the others to form a congruous whole so as not to render any language superfluous.") "A construction which would leave without effect any part of the language used should be rejected, if an interpretation can be found which will give it effect." *State v. Knighton,* 235 So.3d 312 (Fla. 2018) (summarizing cases)

An interpretation where the first two clauses are joined as two prerequisites would render the second clause superfluous and thus would be contrary to how courts interpret text. Therefore, this interpretation violates the voters' intent in adopting the amendment and thus unconstitutional.

Sports Betting 'Typically' Found in Casinos

However, even if the sentence could somehow be interpreted to ignore the third phrase and the rules courts use to construe text were set aside and ignored, the argument still fails. Sports betting in Florida still requires a citizen initiative before it can be lawful.

The proponents point to the phrase "any of the types of games *typically* found in casinos" as the basis for why Amendment 3 does not apply to sports betting. The 'typically found' phrase is connected with the IGRA class III phrase by the word 'and.' Thus, the proponents of this argument maintain that both conditions must be present for the activity to be included in the definition.

The proponents maintain that sports betting cannot meet the 'typically found' in casinos condition. This argument misconstrues the sentence. It assumes that the meaning of 'typically' is similar to asking if most casinos offer sports betting. Proponents can only succeed if their assumption remains unexamined. The test they advocate, merely counting the number of casinos where sports betting can be found is the wrong question. But in making this argument, the proponents ignore the legal landscape at the time Amendment 3 was adopted. Until May of 2018, sports betting

was generally prohibited almost everywhere by state law mandated by a federal act, the Professional and Amateur Sports Protection Act (PASPA), which prohibited all sports betting nationwide except in a few limited circumstances. The sentence reads, "any of the types of games typically found in casinos." The proper inquiry is, where would a Florida voter expect to find lawful sports betting in November of 2018?

Consequently, it is not a test of counting how many casinos offered sports betting, but it is really a test of venue. Where is the particular gaming activity found, not how often is that particular gaming activity found. In other words, where did an individual 'typically' find the legal ability to bet on the results of a single baseball or football game at the time of passage of Amendment 3? The answer is in casinos, and specifically, at casinos in the State of Nevada. Due to PASPA and state laws around the country, broad based sports betting could really only be found at casinos. This nationwide legal prohibition against sports betting, with very limited exceptions, lasted until the PASPA was found unconstitutional in *Murphy v. National Collegiate Athletic Ass'n.*– five months before Florida voters adopted Amendment 3.

It may not have been found often, but when legal sports betting was found, it was 'typically' found at casinos at the time Florida voters adopted Amendment 3. Therefore, even if the argument that an activity must be both 'typically' found in casinos and also be a class III gaming activity under IGRA, sports betting meets that test, and is included in the definition. Before sports betting can be legalized in Florida, it must be authorized by a citizen initiative.

Question 2 – Designated Player Games

2. Are "designated player games" permissible in Florida without a prior citizen initiative authorizing the games?

Summary

No. 'Designated player games' are included within the 30(b) definition in at least two ways. They qualify both as class III gaming and also specifically as 'player banked' games. Neither the constitution nor Florida Statute has ever authorized the games. The only way for player banked, or designated player games, to be legal in Florida is by passage of a citizens' initiative.

A Designated Player Game is a Banked Game

In a designated player game, a cardroom grants a player under Rule 61D-11.002(5) a chance to play against a 'bank' established according to house rules. The Rule reads:

(5) Card games that utilize a designated player that covers other players' wagers shall be governed by the cardroom operator's house rules. The house rules shall:

(a) Establish uniform requirements to be a designated player;

(b) Ensure that the dealer button rotates around the card table in a clockwise fashion on a hand by hand basis to provide each player desiring to be the designated player an equal opportunity to participate as the designated player; and

(c) Not require the designated player to cover all potential wagers.

The potential owner or operator of the bank does not alter whether the players are playing against each other or are playing against the house. Under this Rule, the house decides who may serve as a designated player, sets the conditions, and defines the terms. For all practical purposes the house controls the bank. As Judge Hinkle found, a "'banked game,' as a matter of ordinary English, is a game in which someone, that is, a 'bank,' pays the winners and collects from the losers. . . Under the accepted industry usage, a game with a bank is a banked game, whether the bank is the house, a third party, or a player. *Seminole Tribe of Florida v. Florida,* 219 F.Supp.3d 1177 (N.D. Fla. 2016).

Banked Games Have Never Been Legal in Florida

Beyond dispute, banked games are illegal in Florida. Section 849.086, F.S. Both the industry and the Department of Business and Professional Regulation, Division of Pari-mutual Wagering (Division) have recognized this reality. In fact, the naming of the activity as 'designated player games' and Rule 61D-11.002(5) were a joint effort by both the Division and the industry to "avoid violating the statutory prohibition against offering a 'banking game'. . ." *Dep't of Bus. & Prof'l Reg., Division of Pari-Mutuel Wagering v. Dania Entm't Ctr, LLC,* 229 So.3d 1259 (Fla. 1st DCA 2017).

Agency Failure To Enforce Law Does Not Abolish The Law

Only the Florida Legislature, through statute and prior to the adoption of Amendment 3, could authorize the increase in gaming represented by designated player games. As indicated, no statute authorizes pari-mutuel cardrooms to conduct banked card games. Although the Rule may protect the cardrooms from administrative action from the Division, it does not alter Florida law. "[A]n administrative rule may not enlarge, modify or contravene the provisions of a statute." *State Farm Fla. Ins. Co. v. Unlimited Restoration Specialists, Inc.,* 84 So.3d 390 (Fla. 5th DCA 2012).

Thus, there are no designated player games operated legally in Florida, and because the activity falls within the scope of the 30(b) definition, a citizen initiative would have to be adopted before the games could be authorized.

Question 3 – Moving Slot Machine Permits

3. Are current permit holders who are authorized to operate slot machines in Miami-Dade and Broward counties in certain facilities able to obtain either legislative or administrative authority to move their slot machine permits to some other facility?

Summary

No. Under the current law, a person who possesses a slot-machine license for a pari-mutuel facility cannot transfer that license to another location.

Section 23 Pegs Slot-Machine Licenses To Specific Locations

The 30(b) definition includes slot machines as part of the casino gambling subject to voter approval, except for those previously authorized by the 2004 citizen initiative allowing the machines in certain facilities in Miami-Dade County. All other slot machine authorization must be by citizen initiative.

That amendment was very specific and authorized "Miami-Dade and Broward Counties . . . [to] hold a county-wide referendum in their respective counties on whether to authorize slot machines within existing, licensed pari-mutuel facilities . . . If the voters of such county approve the referendum question by majority vote, slot machines shall be authorized in such pari-mutuel facilities."

"[T]he polestar of constitutional construction is voter intent." *Benjamin v. Tandem Healthcare, Inc.*, 998 So. 2d 566, 570 (Fla. 2008). "Any inquiry into the proper interpretation of a constitutional provision must begin with an examination of that provision's explicit language," and if that "language is clear, unambiguous, and addresses the matter in issue, then it must be enforced as written." *Fla. Soc. of Ophthalmology v. Fla. Optometric Ass'n*, 489 So. 2d 1118, 1119 (Fla. 1986). Courts are to give words used their most usual and obvious meaning. *Lewis v. Leon Cnty.*, 15 So. 3d 777, 780 (Fla. 1st DCA 2009), *aff'd* 73 So. 3d 151 (Fla. 2011).

If these principles of interpreting text are applied, article X, section 23's language explicitly limits slot machines to places, not persons. Slot machines are allowed only— and this is the critical language—"within existing, licensed pari-mutuel facilities. . . ." This phrase is unambiguous, and the relevant noun is "facilities," not permit holders. Thus, the slot machines are tied, directly, to the location and not to license holders.

The term "facilities" is limited, moreover, by certain adjectives and subordinate clauses. These adjectives and subordinate clauses work to limit the type of "facilities" that get slot machines: the pari-mutuel facilities must be "existing"; and

they must be licensed. Thus, slot machines would not be allowed in a facility that had not existed as a pari-mutuel facility in Miami-Dade or Broward County when article X, section 23 passed. Any transfer to a facility in violation of these limitations would simply be contrary to the plain-language of the constitutional provision and thus unconstitutional.

Section 30 does not affect slot machines that operate pursuant to Section 23, because section 23 was enacted by citizen initiative. Section 30 does, however, prohibit the legislature or administrative agencies from exercising discretion that would be inconsistent with Article 23, meaning that these slot machine licenses are, and shall always be, site specific, unless voters amend Article 23 pursuant to Article 30.

Conclusion

The design of Amendment 3 and the voters' intent in overwhelmingly enacting it is clear – that voters, not elected officials - "shall have the exclusive right to decide whether to authorize casino gambling in the state of Florida." The conclusions provided herein are not in any way new or novel. They are consistent with discourse of the campaigns for and against Amendment 3, and the campaign in favor of 2004's Amendment 4 legalizing slot machines "within existing, licensed pari-mutuel facilities."

These issues have already been litigated in the court of public opinion. In 2018, a multi-million dollar campaign effort by sports gambling and pari-mutuel interests opposing Amendment 3 provided considerable accurate context about how Amendment 3 would effect sports gambling and player-designated games. The intent of the voters was informed by numerous statements that create a record to which courts can turn to for an understanding of what voters understood the amendment to do. These statements include:

> *...if the amendment passes, the Florida State Legislature would be prevented from ever crafting or passing any legislation regarding casinos, gambling, or sports betting in the state or be able to propose future amendments regarding gambling to a ballot.* – FanDuel and DraftKings press release http://www.unitedstatesgamblingonline.com/news/draftkings-fan-duel-press-release-vote-no-on- florida-amendment-3.html
>
> *But if Amendment 3 passes, the Legislature will no longer have the power to authorize sports betting in Florida."* -FanDuel https://www.casino.org/news/nduel-urges-florida-players-to-vote-no-on-amendment-3

What happens if Amendment 3 passes? Any attempt to bring sports betting to Florida would be dead in its tracks. – DraftKings
https://www.usasportsbooksites.com/articles/draftkings-and-fan-duel-urge-florida-to-vote-no-on- amendment-3.html

If Amendment 3 passes, it would effectively block any chance for legal sports betting in Florida. – Miami Dolphins tweet
https://profootballtalk.nbcsports.com/2018/11/06/dolphins-urge-fans-to-vote-for-right-to-bet-on- dolphins-games/

State Senate President Bill Galvano told The News Service of Florida that legal sports betting could create huge revenues. He believes that amendment 3 would kill all hope of sports betting legalization: "The revenues are substantial. If Amendment 3 is passed, we'd lose that opportunity and we're hamstrung."
https://www.playusa.com/florida-gambling-amendment-3/

"Amendment 3 will clearly eliminate designated player games in cardrooms throughout the state of Florida. Period." – Jamie Shelton, President, Bestbet
https://www.tampabay.com/florida-politics/buzz/2018/10/23/amendment-3-whats-behind-the-florida-gambling-fight/

Amendment 3 is a self-executing; voter ratified provision of the Florida Constitution and therefore has the full force of law. There is likely no shortage of potential plaintiffs who would have standing to challenge any attempt by the Legislature to overstep the very narrow discretion that Amendment 3 allows it to retain.

Thank you for the opportunity to research this interesting issue, Please do not hesitate to contact me if you have any questions or need any additional information.

Sincerely,

Paul M. Hawkes

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[1] **SECTION 30. Voter control of gambling in Florida.—**
(a) This amendment ensures that Florida voters shall have the exclusive right to decide whether to authorize casino gambling in the State of Florida. This amendment requires a vote by citizens' initiative pursuant to Article XI, section 3, in

order for casino gambling to be authorized under Florida law. This section amends this Article; and also affects Article XI, by making citizens' initiatives the exclusive method of authorizing casino gambling.

(b) As used in this section, "casino gambling" means any of the types of games typically found in casinos and that are within the definition of Class III gaming in the Federal Indian Gaming Regulatory Act, 25 U.S.C. ss. 2701 et seq. ("IGRA"), and in 25 C.F.R. s. 502.4, upon adoption of this amendment, and any that are added to such definition of Class III gaming in the future. This includes, but is not limited to, any house banking game, including but not limited to card games such as baccarat, chemin de fer, blackjack (21), and pai gow (if played as house banking games); any player-banked game that simulates a house banking game, such as California black jack; casino games such as roulette, craps, and keno; any slot machines as defined in 15 U.S.C. s. 1171(a)(1); 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. As used herein, "casino gambling" does not include pari-mutuel wagering on horse racing, dog racing, or jai alai exhibitions. For purposes of this section, "gambling" and "gaming" are synonymous.

(c) 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. In addition, nothing herein shall be construed to limit the ability of the state or Native American tribes to negotiate gaming compacts pursuant to the Federal Indian Gaming Regulatory Act for the conduct of casino gambling on tribal lands, or to affect any existing gambling on tribal lands pursuant to compacts executed by the state and Native American tribes pursuant to IGRA.

(d) This section is effective upon approval by the voters, is self-executing, and no Legislative implementation is required.

(e) 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.

[2] **§ 502.4 Class III gaming.**

Class III gaming means all forms of gaming that are not class I gaming or class II gaming, including but not limited to:

(a) Any house banking game, including but not limited to -

(1) Card games such as baccarat, chemin de fer, blackjack (21), and pai gow (if played as house banking games);

(2) Casino games such as roulette, craps, and keno;

(b) Any slot machines as defined in 15 U.S.C. 1171(a)(1) and electronic or electromechanical facsimiles of any game of chance;

(c) Any sports betting and parimutuel wagering including but not limited to wagering on horse racing, dog racing or jai alai; or
(d) Lotteries.

[3] **§ 502.2 Class I gaming.**
Class I gaming means:
(a) Social games played solely for prizes of minimal value; or
(b) Traditional forms of Indian gaming when played by individuals in connection with tribal ceremonies or celebrations.

[4] **§ 502.3 Class II gaming.**
Class II gaming means:
(a) Bingo or lotto (whether or not electronic, computer, or other technologic aids are used) when players:

(1) Play for prizes with cards bearing numbers or other designations;
(2) Cover numbers or designations when object, similarly numbered or designated, are drawn or electronically determined; and
(3) Win the game by being the first person to cover a designated pattern on such cards;

(b) If played in the same location as bingo or lotto, pull-tabs, punch boards, tip jars, instant bingo, and other games similar to bingo;
(c) Nonbanking card games that:

(1) State law explicitly authorizes, or does not explicitly prohibit, and are played legally anywhere in the state; and
(2) Players play in conformity with state laws and regulations concerning hours, periods of operation, and limitations on wagers and pot sizes;

(d) Card games played in the states of Michigan, North Dakota, South Dakota, or Washington if:

(1) An Indian tribe actually operates the same card games as played on or before May 1, 1988, as determined by the Chairman; and
(2) The pot and wager limits remain the same as on or before May 1, 1988, as determined by the Chariman;

(e) Individually owned class II gaming operations -

(1) That were operating on September 1, 1986;
(2) That meet the requirements of 25 U.S.C. 2710(b)(4)(B);
(3) Where the nature and scope of the game remains as it was on October 17, 1988; and

(4) Where the ownership interest or interests are the same as on October 17, 1988.