



April 4, 2018

VIA ELECTRONIC MAIL

The Honorable Jose Oliva, Speaker-Designate
Florida House of Representatives

The Honorable Bill Galvano, President-Designate
Florida Senate

Dear Representative Oliva and Senator Galvano,

Earlier this week I sent a letter to Speaker Corcoran and President Negron outlining our concerns about the legislature potentially convening a special session on gambling in Florida. We have heard that gambling interests disagree with our analysis on a couple of facts presented in our letter. Their disagreement with the points we raise is not surprising, since these facts undermine the basis for the special session that they desperately want. Combine these facts with the commitment made today by the Seminole Tribe of Florida to continue making anticipated compact payments, and it is unclear why a special session should be held.

I have attached two documents which provide detailed analysis of two important facts:

1. The state cannot rely on pari-mutuel industry revenue, and specifically slot machine revenue promises or projections, to meet budgetary needs or fill fiscal gaps.
2. Revenue estimators, the Florida Supreme Court and even the gambling industry's own legal experts agree with Amendment 3 sponsors that the voter approval requirements of Amendment 3 could be applied to any expansion you might now approve. In other words, you must assume that legislation to expand gambling now may be overturned in November with voter approval of Amendment 3.

We respectfully ask that you consider the following questions with regard to convening a special session:

Doesn't today's commitment by the Seminole Tribe to continue making compact payments resolve the potential revenue loss concern that legislative leaders said was the basis for holding a special session?

Doesn't the pari-mutuel industry's track record of failing to live up to revenue promises and predictions, as well as the analysis provided in your own revenue estimators' report of gambling revenue referenced in the attached document suggest that pari-mutuel revenue is not a reliable enough source to depend on for the purpose of closing revenue gaps?

Doesn't the strong possibility that Amendment 3 will overturn any casino gambling expansions that you might enact in a special session make this all a potentially huge waste of time, effort and taxpayer dollars?

We ask that you consider all of these facts, and to not convene a special session on gambling. Thank you for your service to the people of Florida.

Sincerely,

A handwritten signature in black ink that reads "John Sowinski".

John Sowinski
President, No Casinos

Enclosures: 4 pages follow

Why the Legislature can't bank on the gambling industry to provide needed revenue

Florida's pari-mutuel industry has a lousy track record of meeting revenue promises and even government estimates. Counting on them to fill a budget need has consistently proven to be a bad bet. Here's the history:

Industry Promise - 2004: Slots in Miami-Dade and Broward will generate \$500 million a year in revenue to the state, for education, naturally...

Here are their shamelessly deceptive ads, with a \$500 million promise:

<https://www.youtube.com/watch?v=tM5fI9BqDic>

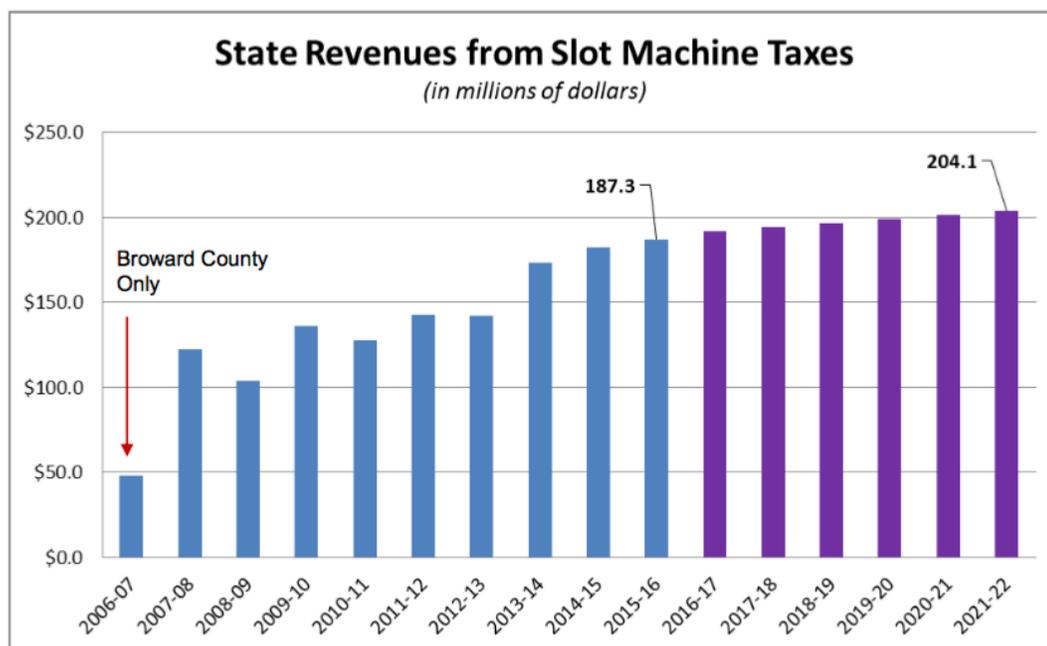
<https://www.youtube.com/watch?v=DM3o2Hy-8Uw&feature=youtu.be>

<https://www.youtube.com/watch?v=a9OcjN6a6e4&feature=youtu.be>

They even signed a "contract" with the Florida School Boards Association, "obligating" them to pay this money even if the legislature did not levy a slot machine tax. "Deal Promises Slot Money to Schools", *Orlando Sentinel*, October 28, 2004

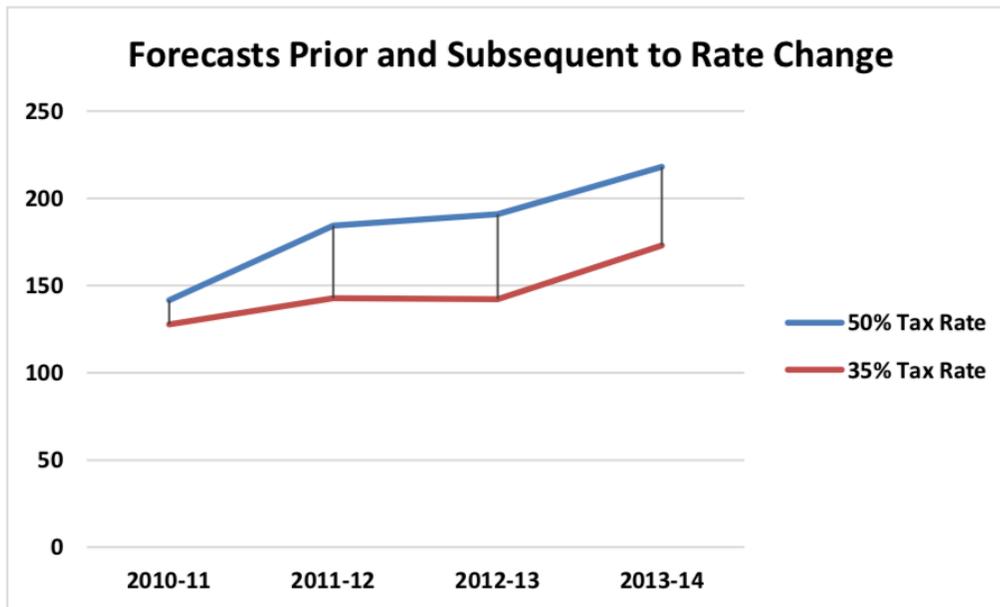
Even state economists bought into the rosy revenue projections. State economists estimated between \$200 and \$600 million would be generated per year, depending on both Miami-Dade and Broward passing slots and the legislature setting the tax rate between 30% and 50% http://edr.state.fl.us/Content/constitutional-amendments/2004Ballot/a1fis_summary.pdf (Note – rate was 50% from FY 2006-2007 through 2009-2010 and total revenue never topped \$130 million)

The reality has been much different, with what was supposed to be half a billion in revenue never exceeding \$188 million:



http://edr.state.fl.us/Content/presentations/gaming/GamingandSlots_2-9-17.pdf (Slide #4)

They lobbied for a big tax cut, promising it would mean more revenue for the state. Wrong again. They got their tax cut, and the state lost money. Even though they never generated anywhere near the amount of revenue they promised, they continually lobbied for tax cuts. In FY 2010-2011, they got their rate cut from 50% to 35%. As state economists pointed out in retrospect, “The underlying assumption was that activity would increase to the point where the rate change was revenue neutral by the fourth year—due to greater capital investments, promotions and prizes. Overall, net income would have had to increase by 43% for the change to have been revenue neutral. It did not.”



http://edr.state.fl.us/Content/presentations/gaming/GamingandSlots_2-9-17.pdf (slide #5)

Today they continue to lobby to reduce their slot machine tax rate from 35% to 20%. Yet they portray themselves as a potential source of new revenue – if only the state would give them more gambling.

<http://www.tampabay.com/news/politics/stateroundup/florida-parimutuel-industrys-slot-machine-gambit-is-no-sure-bet/2266086>

Finally, gambling revenue to the state merely cannibalizes other state revenues.

According to EDR’s Underlying Economic Premises...

- The money for gambling expenditures comes from somewhere; it is not created
- Some or all of the jobs, wages and tax revenues attributed to gambling enterprises may be simply transferred from elsewhere. In other words, if the money was spent elsewhere in Florida, it would also generate jobs, wages and potential tax revenues from that expenditure.

http://edr.state.fl.us/Content/presentations/gaming/GamingandSlots_2-9-17.pdf (slide #7)

Legislators considering a special session should ask themselves:

Is it fiscally responsible to rely on this industry for needed revenue?

Should Florida be more or less reliant on gambling revenue to meet fiscal needs?

Background Analysis: Why Amendment 3 would likely de-authorize any attempt by the Legislature to expand gambling during a contemplated special session

As legislators consider whether it is worth almost \$70,000 per day of taxpayer money to consider politically unpopular gambling expansions in the lead up to the 2018 elections, here are two questions they should be asking themselves and their leaders:

If we come to an agreement that has eluded us and our predecessors for the past seven years, what are the chances that everything we pass will be nullified if Amendment 3 is approved in November?

*And if we build a fiscal scenario that assumes revenue from expanded gambling, and that gambling is de-authorized by Amendment 3, how will that revenue be replaced, and will the legislature need to call **another** special session to replace that revenue?*

Four different experts: Amendment 3 sponsors, the Legislature’s own revenue estimators, the Florida Supreme Court, and even gambling industry legal experts, all come to the same conclusion: There is a very good chance that the voter approval standard established by Amendment 3 may well apply to gambling already in existence when Amendment 3 passes, meaning that if you try to expand gambling before voters have their say, it may be de-authorized in November.

The Intent of the Sponsor

Amendment 3 was written to discourage “buzzer beater” legislation designed to expand gambling before the voters have their say. The word “gambling expansion” is not in the amendment. Rather, it says that in order for a form of casino gambling to be authorized in Florida, it must be approved by Florida voters by constitutional initiative. The intent is that any form of casino gambling that has not been approved by voters through constitutional initiative is not authorized. It is largely non-disruptive of the status quo, except closing loopholes that have been the source of much litigation over the years. But any forms of casino gambling not authorized by voters pursuant to the amendment that the legislature may attempt to authorize before its passage would likely be nullified.

Analysis of Revenue Estimators

And that’s not just our opinion. Florida revenue estimators, convened as the Financial Impact Estimating Conference looked at the amendment and said that its fiscal impact could not be determined, largely because they could not, with certainty, determine if courts would construe it to only apply to new gambling proposals, or also apply to casino gambling authorized by the legislature prior to passage of the amendment. They simply refused to speculate on that matter, and the legislature should do the same, and not presume revenue for forms of gambling it might try to pass without approval of Florida voters pursuant to Amendment 3. Here are the documents from their proceedings, which detail this issue.

http://edr.state.fl.us/Content/constitutional-amendments/2018Ballot/VCGambling_75Words.pdf
http://edr.state.fl.us/Content/constitutional-amendments/2018Ballot/VCGambling_500Words.pdf
http://edr.state.fl.us/Content/constitutional-amendments/2018Ballot/VCGambling_Report.pdf

The Florida Supreme Court

In placing our amendment to the ballot, the Florida Supreme Court said a determination as to whether the amendment would be applied retroactively would be determined after the amendment passes.

Starting on page 10 of the Supreme Court opinion placing our issue on the ballot

http://edr.state.fl.us/Content/constitutional-amendments/2018Ballot/VC_SupremeCourtOrder.pdf, the court said it would not rule on whether the amendment applies retroactively, and reference other cases when courts did not rule whether those amendments would apply retroactively until after passage by the voters. Here’s what they wrote:

A. Retroactive Application

The opponents primarily argue that the Initiative should not be placed on the ballot because it is unclear whether, if passed, the amendment would apply retroactively and what effect, if any, the amendment would have on gambling that is currently legal in Florida—including gambling that was previously authorized by general law rather than by citizens' initiative. However, as the sponsor points out, the opponents' arguments concern the ambiguous legal effect of the amendment's text rather than the clarity of the ballot title and summary.

Opponent Jacksonville Kennel Club cites State v. Lavazolli, 434 So. 2d 321 (Fla. 1983), and Florida Hospital Waterman, Inc. v. Buster, 984 So. 2d 478 (Fla. 2008), for support of its argument that the ballot summary does not properly advise voters whether the Initiative will have any retroactive impact on Florida's current gambling laws. But, in both of those cases, this Court addressed whether the constitutional amendments at issue applied retroactively after the electorate approved the amendments. Likewise, we review the clarity of only the ballot title and summary to determine whether the Initiative may be placed on the ballot. Thus, we do not address whether the amendment would apply retroactively if the Initiative is placed on the ballot and passed by voters, including whether the - 11 - Initiative would retroactively affect licenses previously issued pursuant to article X, section 23, of the Florida Constitution and section 551.102, Florida Statutes (2016).

Gambling Industry Legal Experts

Perhaps the strongest assertions about the likely retroactive application of Amendment 3 comes from well-known gambling lawyer Marc Dunbar in his arguments and briefs before the Florida Supreme Court regarding the amendment. During these arguments, which can be viewed on the link below, Dunbar made the following statements about the likely retroactive application of Amendment 3:

19:35 – 19:40 : *“One of the very clear consequences is the retroactivity portion of this...”*

20:55 – 21:09: *“It's taking away from everybody that has had it for the last 150 years, overturning all of your precedent, all the laws of the legislature, taking it away and saying if you want it back you have to have some type of constitutional amendment.”* (while we agree with his assessment that voter approval requirements of the amendment will likely be applied to existing forms of casino gambling, his statement is greatly exaggerated, since Amendment 3, even if retroactively applied, would have very little effect on games currently in operation since most forms of gambling in existence today already meet this test of statewide voter approval with the exception of those that exploited loopholes that are the subjects of much litigation.)

21:41 – 22:06: *“You go back to era of prohibition when a constitutional amendment eliminated alcohol sales, ok, there have been lots of challenges of the take away of a sin authorization, it's been in gambling, it's been in tobacco, it's been in alcohol, and in every instance the courts across the country have said you're entitlement is only so long as the legislature or a constitution doesn't come in and conflict with it.”*

<https://thefloridachannel.org/videos/11216-florida-supreme-court-oral-arguments-advisory-opinion-attorney-general-re-voter-control-gambling-florida-advisory-opinion-attorney-general-re-voter-control-gambling/>

Mr. Dunbar's brief before the Court devotes 5 pages to the possible retroactive effect of the amendment:

https://efactssc-public.flcourts.org/casedocuments/2016/778/2016-778_brief_120983.pdf

Conclusion

If the Legislature proceeds with a special session to authorize new gambling in Florida, it would be the only public body to presume that Amendment 3 will not be applied retroactively. In reviewing the Amendment, neither the Florida Supreme Court, nor the fiscal experts upon which the legislature relies for revenue estimates, have been willing to assume that it will not de-authorize legislative expansions of gambling that have not received voter approval pursuant to the amendment.