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Former Florida Gov. Bob Graham turns to history books to oppose slot machines

HIGHLIGHTS

Former governor and senator argues that state's gaming history is being misread

He urges Florida Supreme Court to reject arguments that slot machines can be approved without a statewide referendum

Ruling on case could have wide-ranging impact

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TALLAHASSEE — As a member of the state House when Florida rewrote its constitution in 1968, former governor and U.S. Sen. Bob Graham believes a lot of people are missing the point in the current gaming debate.

Graham filed a friend of the court brief Monday in the case involving Gretna Racing LLC, arguing that the Legislature, Gov. Rick Scott's administration and the company that is trying to get a slots permit in the rural community, have misread the Florida Constitution.

His argument: There is no authority to open the door to additional slot machines, or any other forms of gambling, without a statewide referendum, and the court should reject Gretna's argument.

It's the third argument offered in what is shaping up to be a landmark case before the Florida Supreme Court this spring. It could have immediate implications on the gaming compact signed by Scott and the Seminole Tribe and could influence the legislative debate over expanded gambling.

The court, which has not yet scheduled oral arguments in the case, is being asked
Gadsden County — and by extension, any other county — has the right to offer sl
voter referendum without legislative approval.

Gretna Racing, a consortium with the Poarch band of Creek Indians, argues that i
allowed to install slot machines at its card room and race track along Interstate 1
Tallahassee. Gadsden County voters approved a referendum in 2012 that authori
machines at the facility, which had persuaded the state to grant it the country's fi
license for rodeo-style barrel racing.

A court later ruled that the state had issued the barrel racing pari-mutuel permit i company continues to operate its card room and pursue slot machines. Gretna arg referendum is enough to allow it to install the profitable machines. Meanwhile, fi have passed voter referendums authorizing slot machines.

Attorney General Pam Bondi, and the Scott administration, disagree with Gretna license can only be issued after legislative approval.

Graham argues both are wrong. In a 29-page *amicus curiae*, Graham quotes the Florida Constitution and suggests that the 1968 Legislature never intended for any of this to be happening.

"Rejecting Gretna Racing, LLC's interpretation enforces the will and voice of the people of Florida," Graham wrote in his brief, filed on his behalf by former Miami state Sen. Dan Gelber, of the Miami law firm Gelber, Schachter & Greenberg.

"The Florida Constitution prohibits any 'lottery' statewide, 'other than the types of pari-mutuel pools authorized by law as of' its effective date," he wrote. "As of the Constitution's effective date, slot machines were not authorized by law in Florida. Under the plain meaning of the word 'lottery,' a slot machine is a lottery."

By grandfathering in the pari-mutuels that were existing in 1968, and rejecting any others, "the Florida Legislature and the people of Florida thus were clearly seeking to prevent future legislatures from enacting lotteries or pari-mutuels not already in existence," Graham's brief argues.

Graham cites court opinions that have concluded that slots — and dice and roulette — are games of chance like lotteries, and all lotteries — except those explicitly authorized in the state constitution — are outlawed, he says.

"'Throughout history, this Court has defined a lottery as consideration given for a chance at a prize," he wrote. "In 1970, this Court held directly that under the current Florida Constitution a slot machine was a 'lottery' as that word was used in the Constitution."

So what kind of gambling did the Legislature intend to authorize?

That's where Graham taps into the history books and the legislative journal from the constitutional special sessions on Jan. 9, 1967, and Aug.. 31, 1967, when he was freshman Democrat elected to the Florida House from Miami. The initial draft of the rewritten constitution proposed giving the Legislature full authority to sign off on all pari-mutuel gambling.

"All lotteries are prohibited other than pari-mutuel pools regulated by law," the 1967 proposal read. But, Graham notes, a Senate floor amendment offered up during the Aug. 31, 1967, special session instead authorized only those pari-mutuels already in existence in 1968.

"During deliberations on the Florida Constitution, some legislators even proposed to remove the amendment in whole — which would have given the Legislature total authority to regulate lotteries," Graham writes in the brief.

"But that proposal failed. And, in contrast ... the Florida Legislature decided to expand the lottery prohibition. Article X, Section 7, as ratified by the people of Florida, allows only 'pari-mutuel pools authorized by law as of the effective date of' the Florida Constitution of 1968 and prohibits any other type of lottery."

According to a 1970 court ruling, *Greater Loretta Imp. Ass'n v. State ex rel Boone*, the only legal pari-mutuels in existence in 1968 were horse tracks, dog tracks and jai-alai frontons, and, while there were other games of chance in operation — such as bolito and slot machines — the Legislature specifically refused to authorize them.

Graham argues that the Florida Legislature can't authorize slot machines, even if it wants to, unless it receives approval from 60 percent of the voters statewide. He argues that the referendum by 6,042 voters in Gadsden County to expand slot machines in Florida violates the intent of the 1968 Constitution. Because slot machines were not authorized in 1968, and a slot machine is a "lottery," Graham urges the court to reject the argument that they can be authorized without a vote of the people.

Bottom line. he argues: The only legal pari-mutuels are those that existed in 1968 — unless otherwise authorized in the Constitution.

Graham argues that only recently have regulators and lawmakers lost sight of this. He notes that since 1978, Florida voters have been asked to approve casino gambling three times, rejecting it each time. The latest was in 1994 when 61 percent of the voters rejected an amendment to offer full-scale gambling.

In 2004, seven gaming companies from Miami-Dade and Broward counties put an initiative on the statewide ballot to allow those counties to authorize slot machines via a countywide vote. It passed by a narrow 50.8 percent margin.

Since then, however, the advancement of technology and inconsistent rulings from the state's Division of Pari-mutuel Wagering have resulted in the state lurching back and forth between what is an authorized pari-mutuel game and what is not. The division approved and then rescinded its ruling authorizing barrel racing at Gretna and Hamilton Downs in Hamilton County, and it is now being sued by the Seminole Tribe for its decision to allow player-banked card games at Miami-Dade and Broward slots casinos.

The Florida Supreme Court last month granted Graham's request to present arguments in the case. In a separate motion, also filed Monday, Graham argued that neither Gretna, nor the Legislature — nor Attorney General Bondi, who must represent the Legislature in the case — is likely to raise the constitutional question about the limits on the Legislature's authority over gambling, so he should be allowed to present oral arguments to make his point.

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