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Florida Supreme Court Denies Review in Gambling Expansion Case

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The Florida Supreme Court recently denied a request for it to review the Florida Court of Appeal's determination that a Florida statute is valid even though it authorizes slot machines at entities other than those that are described in Article 10, Section 23 of the state's constitution. The Supreme Court's action may help to pave the way for the expansion of gambling activities in Florida.

Article 10, Section 23 of the Florida Constitution provides that "[t]he 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 pari-mutuel 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." Fla. Const. Art. X, §23(a). The provision goes on to state: "If the voters of such county approve the referendum question by majority vote, slot machines shall be authorized in such pari-mutuel facilities." *Id.*

In 2009, the Florida Legislature amended Section 551.101 of the Florida Statutes in a manner that authorized slot machines at facilities other than those that are described in Article 10, Section 23. Arguing that this authorization ran afoul of the constitutional provision, three gaming entities challenged the amendment. The trial court rejected their challenge. So, too, did the Court of Appeal (First District). See *Florida Gaming Centers, Inc. v. Florida Dep't of Bus. And Prof'l Reg.*, 71 So. 3d 226 (Fla. Ct. App. 2011).

Analyzing the scope and functionality of Article 10, Section 23, the Court of Appeals ultimately concluded that, "[c]ontrary to Appellants' position, Article X, section 23 provides no indication that Florida voters intended to forever prohibit the Legislature from exercising its authority to expand slot machine gaming beyond those facilities in Miami-Dade and Broward Counties meeting the specified criteria [in that provision]." *Id.* at 229.¹

On November 1, 2011, the entities who brought the constitutional challenge petitioned the Florida Supreme Court to review the Court of Appeal's decision. Almost six months later, on April 27, 2012, the Supreme Court denied the request. *Florida Gaming Centers, Inc. v. Florida Dep't of Bus. And Prof'l Reg.*, 2012 Fla. LEXIS 862 at *1 (Fla. April 27, 2012) ("the petition for review is denied").

The door is not completely closed on the constitutional issue because the Florida Supreme Court did not address it on its merits. There is, therefore, no binding opinion outside of the jurisdiction of the First District Court of Appeal with regard to the constitutional issue. It is conceivable that, in the future, in a different case with different parties and circumstances, the constitutional issue will again be litigated and the Supreme Court will again be presented with a petition for review, will grant the petition, and, as a result, will address the merits of the issue. As of now, however, the Court of Appeal's decision rejecting the constitutional challenge is the law, and, as one newspaper noted, "[t]he upshot of the Florida Supreme Court decision [is] that state lawmakers may authorize gambling

¹ Additional discussion of the court's decision can be found in "Lots More Slots? Florida Appellate Court Rules That State Constitutional Provision Does Not Limit Overall Number of Slots Facilities," by Anthony R. Holtzman, *et al.* (Nov. 11, 2011), available at <http://www.klgates.com/lots-more-slots-11-11-2011/>.

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wherever they choose." Nick Sortal, "State's Top Court Empowers Lawmakers to Expand Gambling Anywhere in Florida," *South Florida Sun-Sentinel* (April 28, 2012).

Gambling, entertainment, and resort entities, pointing to the decision, will almost certainly lobby the Florida Legislature to authorize gambling in forms, facilities, and counties beyond those that are mentioned in Article 10, Section 23 (*i.e.*, beyond slot machine gambling at select pari-mutuel facilities in Miami-Dade and Broward Counties). While a bill that would have, among other things, authorized the construction of additional resort-casinos in Miami-Dade and Broward Counties recently died in a Florida House committee, the Supreme Court's action may well lend traction to future legislative proposals to expand gambling in Florida. This is especially so given that, as with many other states, Florida's economy has struggled and additional gambling activities are perceived, by some, as a means to boost the economy. See John Kennedy, "Poll Says Voters Think Casinos Good for Economy, But Not Gov. Scott," *Palm Beach Post* (Jan. 10, 2012). While future attempts are also likely to face opposition and the Supreme Court did not provide finality to the constitutional issue, see Tony Batt, "Florida Supreme Court Ruling Unlikely to Boost Casino Effort," *Gambling Compliance* (May 8, 2012), the chill of a potential reversal of the Court of Appeal's decision that such legislative action is constitutional is gone for now.

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