IN THE

Court of Appeals of Maryland

SEPTEMBER TERM 2008

Docket No. 87

STOP SLOTS MD 2008, *et al.*,

Appellants

v.

STATE BOARD OF ELECTIONS, *et al.*,

Appellees

On Appeal from the Circuit Court
For Anne Arundel County

BRIEF OF APPELLANTS

IRWIN R. KRAMER
KRAMER & CONNOLLY
SUITE 211
500 REDLAND COURT
OWINGS MILLS, MARYLAND 21117
(410) 581-0070

Counsel for Appellants

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H. Marylanders United to Stop Slots Steering Committee Members

[*] In accordance with a Thursday, September 11, 2008 telephone conference with the Clerk of this Court, Appellants shall cite to the Record using the same exhibit designations as were provided in the Circuit Court.

> "[A]ll persons invested with the Legislative or Executive powers of Government are the Trustees of the Public, and, as such, accountable for their conduct: Wherefore, whenever the ends of Government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the People may, and of right ought, to reform the old ... ."
>
> — *The Maryland Declaration of Rights*, MD. CONST., DECL. OF RIGHTS, ART. VI

This is an action designed to preserve the integrity of the elections process and ensure that all voters may trust the accuracy of the ballot and government representations. Simply put, public trustees may not betray the public's trust, or manipulate their constituents to achieve political ends.

STATEMENT OF THE CASE

Fending off earlier challenges from litigants who viewed the slots package as deceptive and misleading, the Secretary of State and State Board of Elections urged this Court to refrain from considering the merits of their constitutional objections.[2] Promising that they and other state officials could correct any problems at a later date, these defendants claimed that such objections "would more properly be brought (if at all) as a pre-election challenge to the actual ballot question and voter notification that are prepared under the Election Law Article."

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[2] In *Smigiel v. Franchot* (Docket No. 121, Sept. Term 2007), a computer services professional joined a small group of minority legislators sued, *inter alia*, the acting Secretary of State and State Board of Elections to challenge the constitutionality of legislative enactments arising out of the Special Session of 2007. After a lower court rejected a challenge under MD. CONST. ART. XVI, § 2 as "inapplicable to the facts presented," *Franchot* Record Extract at E. 31, these petitioners raised "newly-conceived" challenges that the Attorney General attacked as unpreserved and premature. Exhibit F at 15 (excerpt of *Franchot* Respondents' Brief, which is appended to Plaintiffs' Motion to Strike).

Though the *Franchot* Court has yet to issue any opinion in that case, and its holdings remain unknown, the Attorney General cited *Franchot* as controlling precedent more than a dozen times in the case at bar. Forgetting their earlier procedural defenses, and an oral argument in which certain judges expressed concerns over the ripeness of that case, Defendants and their counsel asked the Circuit Court to "look no further than the Court of Appeals precedent [in *Franchot*] to reject plaintiffs' repetitive claims in this case." Defendants' Motion for Summary Judgment at 15.

Exhibit F at 18.

Deeming these objections to be "unripe" for review, the Attorney General asked that his clients be given the chance to make whatever corrections were needed when the ballot and summary were ultimately released. Exhibit F at 17. Though these officials were fully aware of these objections when their counsel submitted his February 28, 2008 brief, *see id.*, they waited nearly six months before releasing the proposed ballot language and legislative summary at the last possible moment – August 18th and August 25th, respectively. *Id.*

After receiving these materials, and exactly six months from the day that Defendants promised to use them to correct the misleading nature of the underlying enactments, a large contingent of registered Maryland voters renewed objections which the Attorney General had once attacked as premature. On August 28, 2008, two citizens' groups, Stop Slots Maryland and NOcasiNO Maryland, their respective chairpersons, and a Cecil County delegate filed a Verified Complaint for § 12-202 Judicial Relief and for Declaratory Judgment. Finding that the Secretary of State's proposed ballot question and that the legislative summary only served to exacerbate the deceptive nature of the underlying enactments, these plaintiffs challenged both the constitutionality of what they view as a legislative "bait and switch" scheme, as well as the manner in which Defendants wish to present this package to voters.

To obtain prompt relief under MD. ELEC. LAW CODE ANN. § 12-202(a), these registered voters filed an Emergency Motion for judicial relief at the time suit was filed. Claiming that "[t]he Court of Appeals' decision in *Smigiel v. Franchot* forecloses plaintiffs' attacks on the video lottery enactments of the General Assembly," Defendants moved for summary judgment on September 4, 2008. *See* Defendants' Motion for Summary Judgment and Opposition to Plaintiffs' Emergency Motion for Relief at 13.

In response to the Attorney General's repeated use of *Franchot* as controlling and dispositive authority, Plaintiffs moved to strike more than a dozen citations and references in which the Attorney General "far exceeds the bounds of propriety" by "concocting what he claims to be binding Court of Appeals 'precedent.'" Plaintiffs' Motion to Strike at 1. Because "[a]n

unreported opinion of the Court of Appeals ... is neither precedent within the rule of *stare decisis* nor persuasive authority," *id*. at 4, *citing* Maryland Rule 1-104(a), Plaintiffs' counsel reasoned that such citations are equally improper where, as here, this Court has yet to publish an opinion. *Id*.

Despite Plaintiffs' concern that the Attorney General's references were designed to "[p]rey[] on th[e Circuit] Court's aversion to appellate reversal," *id*. at 3, this three-judge panel denied this motion when they convened for a hearing on September 10, 2008. After hearing arguments on the merits of Plaintiffs' challenges, and on Defendants' Motion for Summary Judgment, the lower court cited the *Franchot* decision as controlling authority.

Without analyzing the merits of Plaintiffs' challenge to the bills comprising the slots package, the lower court disposed of these objections in a single paragraph. Observing that this Court "affirmed, by per curiam order, the Carroll County Circuit Court judgment," the panel rejected this challenge merely by "[a]dopting by reference the opinion of Judge Stansfield of the Circuit Court for Carroll County." Circuit Court Memorandum Opinion at 4.

Though the panel found that the "text prepared by the Secretary of State ... for placement on the 2008 general election ballot is misleading and does violate the standards set forth in the Election Law Article and applicable case law," and expressed concern about his failure to mention any other purposes underlying the slots package, the court refused to insert "better language" into the question. Expressing great reluctance to provide a full remedy, the panel merely ordered that a single word be inserted into the question without any explanation on the manner in which it would somehow eliminate this constitutional deficiency.

Recognizing the need for a remedy which will effectively eliminate the deceptive nature of the proposed ballot question, and the need to address the constitutionality of the slots package as a whole, Plaintiffs filed a Notice of Appeal to this Court on September 11, 2008.

QUESTIONS PRESENTED

I. MAY LAWMAKERS DELEGATE DECISIONS, WHICH THEY ARE FULLY EMPOWERED TO MAKE THEMSELVES, TO VOTERS BY PASSING STATUTES WHICH ARE CONTINGENT UPON THE POPULAR APPROVAL OF DUPLICITOUS CONSTITUTIONAL AMENDMENTS?

II. DID THE CIRCUIT COURT ADEQUATELY CURE DEFICIENCIES IN A QUESTION WHICH ALL THREE JUDGES FOUND TO BE UNCONSTITUTIONALLY DECEPTIVE?

STATEMENT OF FACTS

Calling upon legislators to implement "a more progressive revenue structure" and avoid what he predicted to be a "$1.7 billion structural deficit in [Fiscal Year 2009's] Budget," Governor Martin O'Malley ordered legislators to convene in Annapolis on October 29, 2007. In this "extraordinary session," the Governor unveiled a series of intricate bills designed to correct what he described as a "structural deficit."

A. *The Legislature's "Bait" and "Switch" Scheme*

One of the most contentious parts of the Governor's plan involved the legalization of slot machines to generate additional revenue. Rather than vote to approve slot machines themselves, legislators avoided this controversy by shifting this vote to voters at large. Though legislators had the statutory authority to approve such measures themselves, they refrained from exercising this power and avoided this politically-sensitive issue by placing a skewed version of the plan on the ballot in the next general election.

Unable to place such statewide laws on the ballot directly, *see*, *e.g.*, *Brawner v. Supervisors*, 141 Md. 586, 587, 119 A. 250 (1922); *Benson v. State*, 389 Md. 615, 641, 887 A.2d 525 (2005), legislators adopted a two-bill plan to achieve this same result *indirectly*. Giving new meaning to the phrase "double-billing," legislators passed 74 pages of intricate appropriations statutes, but made them expressly contingent on voter

approval of a companion bill to authorize slot machines under the guise of a proposed "constitutional amendment." Exhibit B at 1-74; Exhibit C at 1-4.[3]

Rather than risk the wrath of gambling opponents by exercising this power themselves, legislators would prefer that their constituents do it for them. In a promotional preamble that begs the upcoming ballot question, the Legislature kicked off the slots campaign by proposing this amendment "for the primary purpose of providing funds for public education." Exhibit C at 1. Lobbying for their own proposal, legislators even used the text of this amendment to reassure voters that their approval would serve "the primary purpose of raising revenue for ... (i) education for the children of the state in public schools, pre-kindergarten through grade 12; (ii) public school construction and public school capital improvements; and (iii) construction of capital projects at community colleges and public senior higher education institutions." Exhibit C at 2.

Conveniently omitting any reference to companion appropriations bills, this proposal makes no mention of the multitude of extracurricular activities which will take priority in reaping these proceeds. *See* Exhibit C at 1-4. Nor does it disclose that legislators have *already* voted to channel these funds away from the classroom in several of these appropriations bills. *Cf.* Exhibit B at 1-74.

Though the Legislature claimed that these funds will improve public education, its appropriations acts speak louder than the misleading words of the amendment and proposed ballot. To the extent that schools receive this revenue, the Department of Legislative Services confirms that these funds will only be used "to *offset* general fund education spending" rather than to increase the existing budget. Exhibit D at 3 (emphasis

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[3] Ironically, the same legislators promoting the need for "a new article to the Maryland Constitution to authorize [slot machine] gaming in the State," Exhibit C at 1, found no need to clutter the Constitution when they passed a statute to expand the charitable use of slot machines only months before. *See*, *e.g.*, MD. CRIM. LAW CODE ANN. § 12-304 (2007). Because the Constitution does not prohibit or restrict such gaming, the General Assembly may authorize the commercial use of slot machines without amending the Constitution. *See id.*

added). Even then, this revenue will only be applied to education *after* all other "general fund expenditures required in the [appropriations] legislation" are satisfied. *Id*. Thus, despite the illusory claim that educational funding was the "primary purpose" of this revenue plan, legislators put it last on their list of fiscal priorities.

B. ***Begging the Question at the Ballot Box***

Rather than correct this misapprehension, the Secretary of State has magnified this illusion by promoting education as the sole purpose for these funds shall be applied:

> **Authorizing Video Lottery Terminals (Slot Machines) to Fund Education**
>
> Authorizes the state to issue up to five video lottery licenses for the purpose of raising revenue for education of children in public schools, prekindergarten through grade 12, public school construction and improvements, and construction of capital projects at community colleges and higher education institutions. No more than a total number of 15,000 video lottery terminals may be authorized in the state, and only one license may be issued for each specified location in Anne Arundel, Cecil, Worcester, and Allegany Counties and Baltimore City. Any additional forms or expansion of commercial gaming in Maryland is prohibited, unless approved by a voter referendum.
>
> (Enacts new Article XIX of the Maryland Constitution)
>
> ☐ **For the Constitutional Amendment**
> ☐ **Against the Constitutional Amendment**

Exhibit A.

This ballot question continues to conceal the true consequences of ratification. Making no mention of the manner in which these funds will actually be allocated, the Secretary even departs from the text of the proposed amendment and promotes education as the *sole* purpose for authorizing slot machines.

By asking voters "to Fund Education," and specifically enumerating educational initiatives which are not included in the Senate appropriations bill, the Secretary would have voters mark their ballots without a clue that 74 pages of appropriations are also

"contingent on the passage of [this] constitutional amendment, and its ratification by the voters of the State." Exhibit B at 73-74. Without disclosing that these statutes will only "take effect [when] the constitutional amendment ... has been adopted by the people of Maryland," *id*., the Secretary would leave this entire revenue package to voters who may never know that they are deciding much more than meets their eyes at the ballot box.

C. *Attempts to Clarify the Misleading Question*

Refusing to provide a full disclosure on the ballot itself, the Attorney General told the lower court that he and his clients made every effort to present a question which would be "as close to 100 words as possible." *See* Oral Argument of Austin Schlick, dated September 10, 2008.[4] Though one judge reminded defense counsel that Maryland no longer places a 100-word limit on ballot questions, the Attorney General seemed to suggest that it was more important to be "concise" than to be "complete." *See id*.

Rather than correct the ballot language for all to see, the Attorney General claimed that he could clarify the proposed question by having elections officials mail voters a legislative summary that mentions other purposes underlying the slots package and that provides "voter notification" that ratification would activate appropriations which will fund a variety of other purposes than education.

Without any concern for whether average voters would see, read or attend to a paragraph of fine print placed at the end of a summary sent through bulk mail only a week before the election, the Attorney General claimed that this was the best method of clarifying the consequences of the upcoming vote.[5]

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[4] An assistant clerk of the Circuit Court for Anne Arundel County informed Plaintiffs' counsel that a CD or DVD of this oral argument was included within the record transmitted to this Court. Due to time constraints, it was not possible to order an official transcript prior to oral argument before this Court.

[5] Indeed, the Attorney General conceded at oral argument that those voting by absentee ballot, including members of the armed forces of the United States, would not receive this mail. Apparently unconcerned about an absentee voter serving his country abroad, defense counsel suggested at oral argument that soldier and other military personnel may easily log on to the

Unfortunately, even voters who receive and read the legislative summary are being told that the "primary purpose" of the slots package is for funding a variety of educational purposes. Rather than disclosing the true fiscal priorities of the underlying package, this mailing makes it appear as though schools will actually benefit from the revenue raised. Rather than disclosing the fact that such revenues would only *offset* education funding that previously came from the general fund, or the fact that education is last on the list of slots recipients, the Department of Legislative Services conveniently ignored its previous legislative summary and provided more promotional literature instead. *Compare* Question 2 Summary (Exhibit E) *with* Department of Legislative Services Fiscal Summary (Exhibit D).

Though the panel denied Plaintiffs' request for a revision of that summary, the lower court correctly rejected Defendants' claim that disclosures in a mass mailed summary could somehow cure deceptive and misleading language on the ballot itself. Focusing exclusively on the ballot itself, and refusing to consider improprieties surrounding the underlying bills, the three-judge panel nonetheless found that the "text prepared by the Secretary of State ... for placement on the 2008 general election ballot is misleading and does violate the standards set forth in the Election Law Article and applicable case law." Memorandum Opinion at 6.

Concerned that the Secretary's proposed ballot may mislead voters as to "the true nature of the legislation upon which they are voting," *id.* (citation omitted), and that there were many non-educational purposes underlying the slots package, the panel refused to order the Secretary to disclose these purposes. Rather than reflecting the actual scope of the slots package, or approving neutral language which would not beg the question at the ballot box, the panel merely asked that the Secretary insert the word "primary" before emphasizing the "purpose of raising revenue for education." *Id.* at 6-7.

Though the lower court recognized the need to apply the same analysis to the ballot's

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State's website and read what he considers to be a full disclosure on the slots package at issue.

title, *id*. at 4 (same standard must be applied to judicial "review of the ballot title and text"), it only "considered whether the ballot *text* is misleading and whether it violates the standards set forth in the Maryland Election Law Article an applicable case law." *Id*. at 5 (emphasis added). Forgetting to apply the same analysis to the title of this ballot measure, the lower court's Order leaves in place title that boldly tells voters they are "**Authorizing Video Lottery Terminals (Slot Machines) *to Fund Education***". Exhibit A (bold in original; italics added).

Rather than explain how the insertion of the word "primary" in the first sentence of the text would eliminate the misleading nature of the question, or offering any reason why they overlooked the misleading title of the measure, the panel expressed great reluctance to go any further than the Attorney General would let it. Because"Schlick ... conceded that this Court has the power under Election Article, §12-204(c) to ... restore to the ballot text the word 'primary,'" Memorandum Opinion at 6-7, " the Court will so direct." *Id*. at 7. To date, this is the only remedy provided for a ballot question that the lower court unanimously viewed as unconstitutionally misleading.

ARGUMENT

Anxious to increase revenue without losing political capital, legislators and executive officials have joined forces to manipulate the public at large and to secure passage of the Governor's plan. Unwilling to gamble their political futures by voting in favor of these "one-armed bandits," lawmakers refrained from exercising their statutory power to authorize slot machines, misrepresented the purpose of the plan, and shifted their legislative duties to a misinformed electorate.

Giving new meaning to the term "double-billing," these officials sought to sell the slots package to voters by dividing it into two bills – a well-publicized House bill designed to inspire popular support and a Senate bill which quietly appropriates this revenue to far less popular causes. After passing the Senate bill, Exhibit B at 1-74, the Legislature conditioned this intricate scheme of appropriations on voter approval of a misleading constitutional amendment contained in a companion House bill. *See* Exhibit C at 1-4.

Enticing voters to authorize slot machine gaming to fund seemingly worthy educational causes, *id*., the proposed amendment makes no mention of legislation which would allocate these funds to other pursuits. Not only does this proposal fail to apprize voters on how slots revenues will actually be used, it fails to notify them on how their *votes* will be used. Without any mention of the contingency contained in the Senate bill, the Secretary's ballot language gives voters no clue that approving this amendment would activate a host of statutes they have never seen.

Unaware that their votes will determine far more than meets their eyes at the ballot box, voters have become pawns in a political chess game. Indeed, by "double-billing" the slots package, legislators have been able to hide most of this plan from public scrutiny, wrap it attractively in school colors, and – with the Secretary's help – deliver the Governor's plan to citizens whose only knowledge of its contents stems from the false pretenses of their elected representatives. Encouraged "to Fund Education," voters who accept this package will unwrap a Pandora's box of incongruous appropriations which are concealed in this unconstitutional "bait and switch."

I. LAWMAKERS MAY NOT AVOID A DECISION TO APPROVE SLOT MACHINES BY TRICKING THEIR CONSTITUENTS INTO CASTING THIS VOTE FOR THEM

Showing little respect for their own constituents, legislative and executive officials have adopted a strategy designed to mislead the electorate and manipulate the voting process. Proposing a constitutional amendment as a pretext for skirting the Constitution itself, these leaders embarked on a disingenuous campaign to circumvent its restrictions, avoid legislative duties, and pass the buck back to taxpayers.

Enticing voters to approve the slots plan for them, legislators began to beg the upcoming ballot question in the text of the amendment itself. Proposing this amendment "for the primary purpose of providing funds for public education," Exhibit C at 1-2, the Legislature commenced this clandestine campaign with a 162-word preamble that does

not utter a single word about less popular uses for this revenue.

Enumerating three broad areas of education funding, their proposal does not specify, or even mention, the multitude of extracurricular activities which would take priority in reaping these proceeds. Nor does the proposal make any mention of a host of appropriations bills which lawmakers *already* passed to take these funds far away from the classroom. Exhibit C at 1-4; *cf.* Exhibit B at 1-74. Instead, officials would place this "educational" proposal on the ballot without educating voters that their approval would activate hundreds of millions of dollars in appropriations which contravene the amendment's expressed purpose.

Like an illegitimate charity, the State has no plans to use these funds to support the worthy cause advertised on the ballot itself. Well aware that few, if any, of these funds will support public education, the Legislature's own fiscal analysis belies the notion that schools will benefit from $546 million in revenues forecast over the next five years. Hardly the sole or primary beneficiary of this revenue, educational institutions will actually *lose* $1.239 billion in funding during that same period. Exhibit D.

Despite soliciting funds for "public school construction," "public school capital improvements," and "construction of capital projects at community colleges and Public senior higher education institutions," Exhibit C at 2, the State will not spend any of this revenue to increase aid for "School Construction." Exhibit D at 5. In fact, by FY 2012, when slot revenues are expected to reach $445 million, the Legislature has only allocated an extra $15 million for "Higher Education" – little more than three percent from a program which legislators have touted to voters as supporting "the primary purpose of providing funds for public education." *See id*.[6]

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[6] Figures don't lie, but legislators can figure. Though the Legislature claimed that these funds will improve public education, its appropriations acts speak louder than the misleading words of the proposed ballot. To the extent that schools receive this revenue, the Department of Legislative Services confirms that these funds will only be used "to *offset* general fund education spending" rather than to increase the existing budget. Exhibit D at 3 (emphasis added). Even

Baiting voters to support a proposal that will save our schools, the Legislature fails to disclose that their votes will flip the switch on voluminous appropriations bills, many of which are designed to save the horse racing industry instead. Unbeknownst to voters who would amend the Constitution on the false pretense of enriching public education, their legislators have already voted to enrich racehorse owners with increased prize money, to renovate racetracks, and to subsidize the business of horse breeders with up to $100 Million per year. *See* Exhibit B at 49-52. Unless they plan to expand the Equestrian Studies program, legislators cannot legitimately claim that their elaborate scheme of appropriations will, in any respect, improve public education.

Rather than jeopardize the election by mentioning any of these appropriations or disclosing that these unrelated appropriations will "take effect [when] the constitutional amendment ... has been adopted by the people of Maryland," *id*., the Secretary would have citizens mark their ballots on the false pretense that this revenue will be used exclusively "to Fund Education." Begging the question even more than his legislative counterparts, the Secretary conveniently omits the word "primary" from what he touts as a verbatim summary of the proposed amendment, reinforces the misapprehension that slots revenue will be used exclusively "to Fund Education," and leaves the entire slots package in the hands of voters who are unaware that their votes will determine much more than the fate of the amendment itself. *See* Exhibit B at 73-74 (74 pages of appropriations bills are "contingent on the passage of [this four-page] constitutional amendment, and its ratification by the voters of the State.").

To be constitutional, such proposals must "fairly apprise the voters of the purpose of the act, not be misleading and not calculated to lead the public to believe that the proposed legislation is substantially different from that which would actually become law

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then, this revenue will only be applied to education *after* all other "general fund expenditures required in the [appropriations] legislation" are satisfied. *Id*. Thus, despite the illusory claim that educational funding was the "primary purpose" of this revenue plan, legislators put it last on their list of fiscal priorities.

... ." *Anne Arundel Co. v. McDonough*, 277 Md. 271, 296, 354 A.2d 788 (1976); *see also Surratt v. Prince George's County*, 320 Md. 439, 449, 578 A.2d 745 (1990).[7]

Paraphrasing this Court, the slots proposal "here fails the test in every respect." *Id*. at 449. Instead of fairly apprising voters of the true purpose of this plan, the Legislature and the Secretary deliberately misstated this purpose to increase the chance of ratification. Leading voters to believe that approving slots will improve our schools, the language of this proposal is substantially different from that which would actually become law in statutes which appropriate these funds elsewhere. Not only does this proposal conceal the true purpose of the slots plan, it even conceals the true purpose of the public's vote – to activate a host of appropriations which have nothing to do with public education.

Hardly an inadvertent omission, the Legislature and the Secretary carefully crafted the proposed amendment and ballot language to mislead the public into approving it. "[W]here there is an *apparent opportunity for misleading* ... the public, the Court has not hesitated to strike down many acts" under less egregious circumstances than those surrounding the slots amendment. *Bell v. Prince George's County*, 195 Md. 21, 28-29, 72 A.2d 746 (1950) (emphasis added). Even without the level of deception exemplified in the case at bar, Maryland courts have little tolerance for legislative proposals which are

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[7] Although the amendment proposed in *Surratt v. Prince George's County*, 320 Md. 439, would repeal the County's waiver of tort immunity under certain contingencies, a summary appearing on the ballot "contained not the slightest hint of that possible outcome." *Id*. at 448. Rather than emphasize such an unpopular change, the ballot led voters to believe that their approval would simply reaffirm that "the County will only waive its immunity in those instances where its officers and employees are liable." *Id*. Concealing the purpose of a proposal designed to change this law under certain conditions, the ballot "told the voter nothing about what really was involved."

Though voters in *Surratt* could readily discern its purpose by reading the amendment itself, this disclosure was not enough to "convey to a voter an understanding of 'the full and complete nature' of what the ... amendment involved." Because the ballot failed to present a full understanding of this proposal, it may have "prevented a free and full expression of the popular will." *Id.* at 409, *quoting McDonough*, 277 Md. at 307. Accordingly, this Court invalidated an amendment which County residents overwhelmingly voted to approve.

presented to the public in a false light.

Placing a high value on fair and honest elections that truly reflect the will of the people, this Court has even invalidated ballot measures that contain incomplete or misleading titles. It may be unwise to judge a book by its cover, but voters – and even legislators – frequently judge proposed amendments and other legislation by their titles alone. Considering this tendency, Maryland courts must ensure that all aspects of a ballot measure "present a clear, unambiguous and understandable statement of the full and complete nature of the issues." *McDonough*, 277 Md. at 300.

To advise "voters of the *true nature* of the legislation upon which they are voting," *Anne Arundel Co. v. McDonough*, 277 Md. 271, 300, 354 A.2d 788 (1976) (emphasis added), and "to guard against fraud in legislation," *Culp v. Comrs. of Chestertown*, 154 Md. 620, 141 A. 410 (1928), Maryland courts have repeatedly stricken otherwise valid acts which were presented in a confusing or misleading manner. *See*, *e.g.*, *Anne Arundel Co. v. McDonough*, 277 Md. 271 ("the amendments would have accomplished numerous changes, none of which were even alluded to" in the title); *Shipley v. State*, 201 Md. 96, 100-104, 93 A.2d 67, 69-71 (1952) (invalidating proposal to amend two articles, only one of which was mentioned in title); *Culp v. Comrs. of Chestertown*, 154 Md. 620, 141 A. 410 (1928) ("the title express[ed] an entirely different purpose ... [which was] not only deceptive and misleading, but is at variance with the body of the act").

This same result is particularly appropriate where, as here, the title, the ballot language and the text of the amendment itself were crafted to deceive and to mislead the electorate. Unlike "logrolling" cases in which a title or summary may be a bit confusing, the language of the underlying amendment fails to advise "voters of the *true nature* of the legislation upon which they are voting," *McDonough*, 277 Md. at 300. Soliciting votes on the basis of seemingly laudable educational pursuits, the proposed amendment fails to advise voters of a host of extracurricular activities which take priority in funding and sends voters to the polls without disclosing all that hinges on their votes.

Once they get there, the Secretary has reinforced the illusion that the sole purpose of the slots plan is "to Fund Education." Promoting ratification "for the purpose of raising revenue for education of children in public schools, prekindergarten through grade 12, public school construction and improvements, and construction of capital projects at community colleges and higher education institutions," Exhibit A, the Secretary fails to disclose the manner in which these funds will actually be spent – or the fact that lawmakers have already approved an appropriations bill directing these funds far from the classroom.

Ignoring the true purpose for these funds, or the true consequences of ratification, the Secretary and legislative leaders have bet against the public's right to truth in voting. Regardless of one's personal views on the expansion of gambling, this is one bet that the people of Maryland cannot afford to lose.

Both in the appropriations act and in the proposed constitutional amendment, the General Assembly twisted language as a tool to conceal the true objectives of the slots package and to entice voters to approve a plan that purports to sponsor education.

To camouflage the multitude of extracurricular appropriations contained in this legislation, and to conceal the true nature of the slots legislation, the General Assembly passed Senate Bill 3 with a label that belies the substance of this lengthy appropriations act. Though calling it an act concerning "**Maryland Education Trust Fund – Video Lottery Terminals**," *see* CHAPTER 4 OF THE LAWS OF MARYLAND (Special Session 2007) [Exhibit B], the General Assembly appropriated hundreds of millions of dollars in slots revenue to the owners of gambling parlors, racetrack owners, prize money for winning thoroughbreds, the Maryland Lottery Agency, and other programs having nothing to do with education. *Id*.

This appropriations act differs greatly from the amendment that it purports to "implement." Conveniently omitting any reference to the manner in which slots revenues will actually be distributed, the proposed amendment focuses exclusively on presumably

worthwhile educational goals instead.

Generating illusory language on which to beg the upcoming ballot question, legislators have sent the entire revenue package to voters without the information needed to assess it. Should voters approve of a plan which purports "to Fund Education," they may be surprised when they open the actual contents of the slots package. Rather than fund education, voters will learn that funding for education will only *decrease* over the next five years, Exhibit D, that any funds coming from slots will only *offset* the same funds coming from other parts of the state budget, and that the primary beneficiaries of the plan are *private interests* rather than public education. *See* Exhibit B at 1-74.

Together, both parts of the slots package nicely disguise facts from the public. Hardly providing "truth-in-labeling," the Legislature conceals the actual ingredients of the slots package in the hope that the public will swallow the bait. Blatantly disregarding fundamental constitutional restrictions designed to advise the public and others of the true contents of legislation, this legislative bait and switch plan cannot be sustained.

A. *Legislators May Not Constitutionally Abstain from Voting on Behalf of Their Constituents*

Hoping to burden the public with a decision they would rather avoid, these officials have reversed roles with their own constituents. Though the Constitution does not permit legislators to pass their elected duties back to the electorate, or to pass laws which are contingent on voter approval, these lawmakers would place their political interests above provisions designed to serve the public interest.

In a representative democracy, the people delegate power *to* legislators – *not* the other way around. "The general powers of legislation being conferred exclusively upon the Legislature, that body may not escape its duties and responsibilities by delegating such legislative power to the people at large." *Brawner v. Supervisors*, 141 Md. 586, 587, 119 A. 250 (1922); *Benson v. State*, 389 Md. 615, 641, 887 A.2d 525 (2005).

This Court has long held the view that "the people of Maryland, having delegated

to the Legislature of Maryland the power of making its laws, that body could not legally or validly redelegate the power and the authority thus conferred upon it to the people themselves." *Brawner*, 141 Md. at 595. By delegating this power to the Legislature, the people of Maryland "reserv[ed] no part of such power to themselves." *Board v. Attorney General*, 246 Md. 417, 431 (1967). "[I]f the Legislature cannot delegate to the people the law making power which the people delegated to them, then it cannot pass a valid act which can only become a law in the event that the people of the State approve it." *Brawner*, 141 Md. at 599.[8]

This is especially true in connection with revenue measures, where legislative power is precisely defined and sharply curtailed. As "a pioneer in inaugurating [a constitutional amendment] for controlling appropriations," *McKeldin v. Steedman*, 203 Md. 89, 99 (1953), Maryland's balanced budget provision eliminated the economic instability arising from unrestrained political pressures, shifted most of the State's fiscal power from the Legislative Branch to the Executive Branch, and established a strict protocol for the consideration of budget and appropriations bills. *Id*.; *see* MD. CONST. ART. III, § 52.

Cutting legislative authority, the Constitution limits much of the Legislature's fiscal power to *cutting* the Governor's spending initiatives. *Id*. "[T]o discourage proposals for new appropriations," it expressly forbids legislators from exercising additional revenue authority unless they are willing to "assume the burden and

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[8] The people did reserve the power to place some issues on the ballot in "facultative" referenda, *see* MD. CONST. ART. XVI; *Board v. Attorney General*, 246 Md. at 431; *Ritchmount Partnership v. Board*, 283 Md. 48, 60 n.9 (1978), but did not reserve any power to vote on revenue measures like those contained in the slots package. In ratifying the 1915 Referendum Amendment, citizens made it clear that "[n]o law making any appropriation for maintaining the State Government, or for maintaining or aiding any public institution ... shall be subject to rejection or repeal" by voters. APP. 3. Having delegated this power to the Legislature, neither the Legislature nor the people of Maryland may call for a popular vote on bills like those at issue here. *See Kelly v. Marylanders for Sports Sanity*, 310 Md. 437, 530 A.2d 245 (1987) (rejecting voters' efforts to place remarkably similar bills on ballot).

responsibility" of approving a "supplementary appropriations bill." MD. CONST. ART. III, § 52(8) (bill must be passed by a majority of both Houses and presented to the Governor); *McKeldin*, 203 Md. at 98. Since the "General Assembly is forbidden to appropriate any money except in accordance with [these] provisions," *id*., legislators have no right to shift this burden and responsibility to the public at large.

Nor should legislators be permitted to avoid these duties by cluttering the Constitution with needless amendments. Contrary to the claims of its sponsors, voters do ***not need*** to add "a new article to the Maryland Constitution to authorize [slot machine] gaming in the State." Exhibit C at 1. Well aware that the Constitution does not restrict such gaming, these same lawmakers had no need to amend it before authorizing the limited use of slot machines during the regular session of 2007. Having exercised its statutory power to expand the use of these machines only months before, the Legislature cannot abdicate this power and use the amendment process as a disingenuous pretext for shifting its vote to voters at large. As they are fully empowered to approve the entire slots package, legislators may not avoid the burden and responsibility of this decision by recruiting unsuspecting voters to make it for them.

II. THE CIRCUIT COURT'S REVISION DOES LITTLE TO CURE A QUESTION WHICH ALL THREE JUDGES FOUND TO BE MISLEADING

A. *Like Defendants' Original Question, the Revised Ballot Fails to Divulge the Full Purpose of the Slots Package or the Consequences of Approving It*

Unless and until this Court abandons a long line of precedent, Defendants may not place a question on the ballot unless it is designed to "fairly apprise the voters of the purpose of the act, not be misleading and not calculated to lead the public to believe that the proposed legislation is substantially different from that which would actually become law ... ." *Anne Arundel Co. v. McDonough*, 277 Md. 271, 296, 354 A.2d 788 (1976); *see also Surratt v. Prince George's County*, 320 Md. 439, 449, 578 A.2d 745 (1990).

Though the Attorney General questioned the lower court's power to scrutinize ballot language proposed by members of the Executive Branch, this Court has never left the accuracy and reliability of ballots to the unfettered discretion of state officials. Indeed, "where there is an *apparent opportunity for misleading* ... the public," the high court has not deferred to the Secretary of State or elections officials and "has not hesitated to strike down" language which falls short of the constitutional standard. *Bell v. Prince George's County*, 195 Md. 21, 28-29, 72 A.2d 746 (1950) (emphasis added); *see*, *e.g.*, *McDonough*, 277 Md. at 296 ??? ("the amendments would have accomplished numerous changes, none of which were even alluded to"); *Shipley v. State*, 201 Md. 96, 100-104, 93 A.2d 67, 69-71 (1952) (invalidating proposal to amend two articles, only one of which was mentioned); *Culp v. Comrs. of Chestertown*, 154 Md. 620, 141 A. 410 (1928) (proposed language was "not only deceptive and misleading, but is at variance with the body of the act").

Though the Attorney General prefers to focus on extraneous materials, this Court must examine the ballot question itself to determine its constitutionality. *See McDonough*, 277 Md. at 300 (emphasis added). "[T]o guard against fraud in legislation," *Culp v. Comrs. of Chestertown*, 154 Md. 620, 141 A. 410 (1928), "the standard by which the question's validity will be judged ... is whether the question posed, accurately and in a non-misleading manner, apprises the voters of the true nature of the legislation upon which they are voting." *McDonough*, 277 Md. at 300; *see also* MD. ELEC. LAW CODE ANN. § 9-203 (articulating standards of accuracy for ballots without regard to mass mailings or other extraneous literature).

Seeking a lower standard, the Secretary of State and elections officials believe that a question's validity should be not be judged on the information conveyed, but on whether the Secretary drafts it "using much of the actual language of the amendment." AG at 24. Considering this to be a "sensible" approach, the Attorney General is not troubled by the omission of words which may give the public a significantly different

impression than that set forth in the underlying acts. *McDonough*, 277 Md. at 296; *Culp*, 154 Md. at 141.

In Proposed Question 2, Secretary McDonough ignored the standard set forth in a case that bears his name. Rather than drafting a question designed to inform voters of "that which would actually become law," *McDonough*, 277 Md. at 296, the newly-appointed Secretary overlooked a plethora of Court of Appeals decisions and remarked that "there are no written procedures" on how to prepare questions for the ballot. Statement of Secretary John P. McDonough Regarding Transmittal of Ballot Questions at 1 (Exhibit G).[9]

Acting on the Attorney General's advice, the Secretary claims to have "used almost exclusively the identical words of the Amendment," with "one significant deviation" to identify Video Lottery Terminals as "Slot Machines." *Id*. at 2. In a prepared statement that is almost as misleading as the question he produced, Secretary McDonough conveniently ignored far more serious deviations from the language of the underlying amendment and from the standards governing the preparation of ballot questions.

Departing from the misleading language of the amendment itself, Secretary McDonough drafted a question calculated to lead the public to believe something quite different from what would actually become law upon ratification. Rather than advise voters of true nature of the slots plan, the Secretary even exceeded the misleading language of the underlying amendment in an effort to bolster the purported educational benefits of the proposal.

After changing the amendment's title from "Video Lottery Terminals –

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[9] Instead of reciting and following this Court' standards, Secretary McDonough telephoned a former Secretary of State John Willis for his advice. Exhibit G at 1. Unaware that Professor Willis is a member of the steering committee of a ballot issue committee formed to defeat the slots plan, Exhibit H at 3, this apparently brief conversation prompted Secretary McDonough to review prior ballot questions rather than to review prior precedent. *Id*.

Authorization and Limitations" to "**Authorizing Video Lottery Terminals (Slot Machines) *to Fund Education***," Exhibit A (Proposed Question 2) (bold in original; italics added), the Secretary edited the text of the proposed amendment itself. Though the amendment conveyed the misleading impression that slots revenue would be used for the "primary purpose of raising revenue" for various educational programs, Exhibit C at 2-3, Secretary McDonough further reinforced this illusory educational purpose by deleting the word "primary." Exhibit A.

Though the Circuit Court ordered the Secretary to put that word back in, it failed to explain how this would rectify his failure to disclose any other purpose for slots revenue, or the promotion of one rather illusory purpose to the exclusion of many which contradict the impression conveyed. Focusing solely on illusory educational pursuits, the question fails to advise voters of any non-educational beneficiaries, leads voters to believe that these funds would expand the education budget, and devotes three full lines to enumerate three purported areas of school funding. *Id*. ("for the purpose of raising revenue for education of children in public schools, prekindergarten through grade 12, public school construction and improvements, and construction of capital projects at community colleges and higher education institutions"). Combined with a bold title that still authorizes slot machines "**to Fund Education**," *id*., voters who read this language at the polls can only conclude that the purpose for authorizing slots is, well, "*to Fund Education*"!

Rather than use the ballot to provide a balanced, objective and neutral disclosure, the Attorney General cited old, superseded rules which once required that the Secretary limit ballot language to 100 words or less. Finding it more important to be "concise" than to be complete, the Secretary nonetheless found three full lines of space to expound on the purported educational benefits of the slots plan, without sparing any space to disclose "that which would actually become law." *McDonough*, 277 Md. at 296.

Though the lower court recognized the need to apply the same analysis to the ballot's

title, *id*. at 4 (same standard must be applied to judicial "review of the ballot title and text"), it only "considered whether the ballot *text* is misleading and whether it violates the standards set forth in the Maryland Election Law Article an applicable case law." *Id*. at 5 (emphasis added). Forgetting to apply the same analysis to the title of this ballot measure, the lower court's Order leaves in place title that boldly tells voters they are "**Authorizing Video Lottery Terminals (Slot Machines) *to Fund Education***". Exhibit A (bold in original; italics added).

Despite the lower court's resistance to any further revision, this Court has never required voters to "read between the lines" in order to ascertain the true consequences of their votes. Nor does it expect voters to use "extrasensory perception" at the ballot box.. Focusing on the ballot language alone, the Secretary of State may only certify language with the "clarity and objectivity required to permit an *average voter*, in a meaningful manner, to exercise an intelligent choice." *McDonough*, 277 Md. at 300 (emphasis added).

Rather than offer any reason why they overlooked the misleading title of the measure, it would appear that this was an oversight on the part of a panel that exercised its best effort to return a quick decision by close of business on the same day as the hearing. Nonetheless, the panel did express great reluctance to go any further than the Attorney General would let it and seemed to provide great deference to his recommendations. According to the lower court, because"Schlick ... conceded that this Court has the power under Election Article, §12-204(c) to ... restore to the ballot text the word 'primary,'" Memorandum Opinion at 6-7, " the Court will so direct." *Id*. at 7.

Though one would never know it from reading the proposed ballot, voters who are asked to approve slot machines "to Fund Education" will unwittingly activate appropriations which channel these funds far from the classroom. *See* Exhibit B at 1-74. In fact, contrary to the supposed "constitutional mandate" to use these funds "for the primary purpose of funding education," education is actually last on the list of fiscal priorities.

Ironically, even if voters were to read the actual text of the amendment itself, they would have no idea that their approval would send hundreds of millions of dollars to non-educational pursuits before schools receive funding. Hardly the Legislature's "primary purpose" in appropriating slots revenue, the State Lottery Agency, private slot machine owners, members of the horse racing industry and small businesses take priority to these funds. *See* Exhibit B at 48-49 [State Gov't Code Ann. § 9-1A-27(a) regarding "Proceed Distribution"]. Indeed, to the extent that schools receive any of these funds, they will only be used "to *offset* general fund education spending" rather than to increase the existing budget. Exhibit D at 3 (emphasis added).[10]

In truth, what the Attorney General calls "implementing legislation" is anything but. Contrary to the impression left on the ballot or in the amendment itself, education is neither the sole nor primary beneficiary of the plan. Though the ballot conceals the actual purposes for which this revenue will be used, these companion appropriations bills fail to implement the "primary purpose" set forth in the amendment and do not even come close to serving the exclusive educational purpose set forth on the proposed ballot.

Not only does the proposed ballot promise to use this revenue "to Fund Education," it also attempts to alleviate public concern over the societal ills of gambling by assuring voters that any expansion of this plan "is prohibited, unless approved by a voter referendum." Exhibit A. Without disclosing legislation which would already expand the purpose of this revenue plan, voters who read this ballot language have every reason to expect an opportunity to vote on any proposal to fund non-educational programs.[11] Unless this Court ignores the need for truth in voting, and protects the

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[10] Even the Circuit Court seemed confused about the order of fiscal priorities, or the fact that any funds trickling down to education will only serve to *offset* existing general fund expenditures for schools. In its Memorandum Opinion, the panel seems to believe that education is, indeed, the "primary" purpose when, in fact, it is last on the list, behind all other beneficiaries.

[11] Though the ballot does not provide any information on the nature of this referendum, the amendment itself severely restricts this new "referendum power." Unlike other referendum

fundamental right to vote, provisions which conceal vital information from the electorate cannot be sustained.[12]

B. *Defendants Cannot Cure These Constitutional Defects by Mailing Voters the Fine Print*

Unwilling to revise the ballot to fully disclose the purposes of the slots plan or to

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provisions set forth in the Maryland Constitution, this special provision requires much more than a majority of the votes cast in a general election. Requiring a super-majority of Maryland voters, the electorate would only be permitted to expand the use of commercial gaming if the expansion is approved "by a majority of the *qualified voters in the State*." A-13 (emphasis in original). Exhibit C at 4. Even if a majority of registered voters turn out to vote in a given general election, it would take an unprecedented landslide to approve any future expansion. Though this would probably please anti-gambling interests, the severe limitation of the electorate's power should be disclosed.

[12] Though the Attorney General claims that the referendum should myopically focus on the amendment alone, this Court has never required such shortsightedness. Considering a revenue package quite similar to that at bar, this Court refused to exalt form over substance in the case of *Kelly v. Marylanders for Sports Sanity*, 310 Md. 437, 530 A.2d 245 (1987). There, citizens opposed to the construction of expensive sports stadia petitioned, *inter alia*, to place on the ballot a bill fixing the location of these facilities at Camden Yards. Though that particular bill would not require voters to handle intricate revenue and appropriations questions, this Court rejected their effort to send this isolated question to the public at large. *Id*.

Rather than approve efforts to place a limited question on the ballot, the Court observed that the bill fixing the location of these facilities was passed as part of the same legislative package as the revenue and appropriations bills designed to fund them. *Id*. at 446. Echoing the legal opinion of Attorney General J. Joseph Curran, Jr, *see* 72 Op. Att'y Gen. 43, 62. (1987), the Court observed that all three bills were designed to "function in tandem." *Id*. at 472. Because each is an inseparable and interdependent part of the overall package, each item within it must be read as an appropriations bill which may not be placed on the ballot. *Id*. at 469. "We have held time and again that statutes dealing with the same subject matter, particularly when enacted at the same session, being *in pari materia*, must be read together in order to determine their proper construction." *Id.*

While *Kelly* dealt with a referendum initiated by voters, this Court should not defer to artificial legislative bill designations, break up the slots package, and refuse to read it *in pari materia*. Unlike the stadium bills, each piece of the slots package is expressly "contingent" on voter approval. Thus, while the Legislature purported to send only one of these measures to the November ballot, it is, in reality, delegating final approval of both bills. Under these circumstances, a departure from *Kelly* would not only place form over substance. It would grant the Legislature a license to use artificial bill designations as a means of manipulating the popular vote.

communicate the fiscal consequences of ratification, Defendants prefer to bury the details in a literature that many voters may never open, see or read before going to the polls. Conceding the fact that "voters are ... left in the dark" about how slots revenues will actually be distributed, AG at 26, Defendants purport to correct deficiencies on the ballot by placing additional information in a paragraph placed at the end of a mass mailing.

Like Madison Avenue advertising executives, Defendants are well aware of the power of "point-of-purchase advertising" and the relatively ineffective nature of junk mail sent to the masses. Without any concern for the misleading language of the ballot itself, the Attorney General strains to argue that these documents, taken "together, ... provide voters a comprehensive understanding of the General Assembly's proposal." AG at 13. Overlooking constitutional requirements governing the certification of the ballot itself, the Attorney General claims that both documents place voters on constructive notice of all material terms. *Id*.

Those working in the Attorney General's Consumer Protection Division would probably disagree. Neither consumers nor Maryland voters should be required to read the "fine print" to determine the contents of a particular package. Nonetheless, the attorneys assigned to the case at bar would give government officials far more leeway in concealing such contents from Maryland voters. If Defendants have their way, state officials would have free license to hide the ingredients of the slots package by removing them from the ballot and placing them in fine print far removed from the point of purchase.

This is hardly the way the government should treat its citizens. Yet, this is precisely what legislators and state officials have done in connection with the slots package. Content to hide the details at the end of a bulk mailing, Defendants would send most voters to the polls unaware that they may approve much more than meets their eyes at the ballot box.

Should these consumers buy the advertised plan, many voters open the slots package to learn, for the very first time, that they were not, in fact, voting "to Fund

Education." In this governmental bait and switch scheme, these votes will fund a variety of non-educational programs and private interests which were never listed on the box.

The deceptive nature of this scheme is particularly troublesome where, as here, listing on the ballot box actually conflicts with the fine print contained in the proposed mailing. Though the Department of Legislative Services' Summary states that education is the "primary purpose" of the plan, the official statewide ballot claims otherwise. Though the final paragraph of this summary lists many other contents of this package, these ingredients are missing from the package advertised at the polls. Instead, the packaging voters will see at the point of purchase will only refer to the sweet, but ultimately illusive, educational ingredient.

Faced with a conflict between the mailing and the ballot itself, it is quite likely that many voters will resolve it in favor of the language placed on the official statewide ballot. Yet, even those who read this mail from start to finish will come away from this tortured reading assignment with a misunderstanding of the true purpose of the plan itself. By repeating the misleading language of legislators, the Department's Summary only serves to reinforce the illusory educational purposes of the slots plan without informing voters of the fact that education is actually the least of the Legislature's fiscal priorities.

If truth in labeling matters when regulating private industry, we should require no less of government officials on the ballot of a statewide election.

C. *To Meet Constitutional Standards, the Slots Plan Must Be Presented to Voters in Neutral, Objective and Honest Terms*

By employing a legislative bait and switch scheme, the General Assembly shares much of the blame in creating these untenable and deceptive ballot issues. Yet, to the extent that Defendants can correct these misrepresentations at all, the place to start is on the ballot itself.

Rather than beg the question at the ballot, Plaintiffs have proposed a neutral presentation of the issue in earlier pleadings. Ironically, the Attorney General has

objected to their proposal, arguing that, by failing to articulate the specific elements of the slots plan, they have created a question which is "vague" and "confusing."

It is quite odd to object to language as vague and confusing when the alternative is deceptive and misleading. Yet, Defendants would rather salvage a suspect legislative scheme than face the true facts underlying a concerted effort to mislead the public. Straining to maintain and to bolster legislative efforts to deceive the electorate, these state officials have advanced the underlying legislative objective of securing the ratification of a plan the legislators failed to approve themselves. Though it may be foolish to think that such a scheme may be salvaged with neutral and unbiased ballot disclosures, this Court should not tolerate anything less.

CONCLUSION

Though the legislative and executive branches of government have bet against the need for truth in voting, the ballot box is not a place to gamble with a citizen's right to know the consequences of his or her vote. Nor is it the place to campaign in favor of a ballot measure by concealing its true purpose and promoting illusory objectives.

Unfortunately, with the full cooperation of the Executive Branch, legislators have placed their strongest campaign literature on the ballot itself. Promoting the slots amendment as a boon to education, the Secretary's point-of-purchase advertisement entices voters to buy a bill of goods which will not be funded with revenue from slot machines. Leading voters to believe that education will benefit from slot revenues, the Secretary hopes to secure passage of the Governor's plan based on the false pretenses of legislators who have already voted to allocate these funds elsewhere.

Having been elected to debate and to vote upon such revenue measures, the Legislature "may not escape its duties and responsibilities by delegating such legislative power to the people at large." *Brawner*, 141 Md. at 587; *Benson*, 389 Md. at 641. Though proponents of the slots amendment extol the virtues of "letting the people decide" the outcome of this controversy, there is no virtue in deceptive tactics that "prevent[] a

free and full expression of the popular will." *Surratt*, 320 Md. at 409, *quoting* *McDonough*, 277 Md. at 307.

Rather than promote democracy, disingenuous efforts to pass the buck back to the electorate actually undermine democratic principles. As this Court has long observed, in a representative democracy, the people delegate power *to* legislators – *not* the other way around. *Id*. When legislators and state officials twist the system into a deceptive campaign to manipulate the popular vote, the Court must intervene to preserve truth in voting and the fundamental principles on which our democracy was founded.

In accordance with the Constitution and fundamental principles of due process, Plaintiffs respectfully request that this Court provide the relief requested in the Verified Complaint for § 12-202 Judicial Relief and for Declaratory Judgment.

As the Attorney General claims, it may not be possible to salvage a referendum which is founded on a deceptive and misleading bait and switch scheme. Indeed, Defendants vehemently resist this Court's intervention, suggesting that enforcement of constitutional ballot standards would somehow violate the separation of powers. Yet, regardless of the difficulty in attempting to salvage the slots package as currently presented, these standards cannot be disregarded and, regardless of the remedy imposed, voters must not be deceived.

Respectfully Submitted,

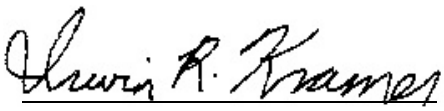
Irwin R. Kramer
KRAMER & CONNOLLY
Suite 211
500 Redland Court
Owings Mills, Maryland 21117
(410) 581-0070

Counsel for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 11, 2008, by agreement of counsel in this case, a copy of the foregoing was sent via electronic transmission to:

Douglas F. Gansler, Esquire
Austin C. Schlick, Esquire
Office of the Attorney General
200 Saint Paul Place
Baltimore, Maryland 21202



Irwin R. Kramer

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