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LESSONS FROM FLORIDA: SWING LOW, SWEET CHARITY

MICHAEL FLYNN*

INTRODUCTION

Bev and Jim have so much to be thankful for. You see, their youngest daughter, Samantha, was born with Turner's syndrome. Turner's syndrome, without getting too medically complicated, sentences a child to a life of being too short.¹ The prospect for Samantha to be in the normal range of height was not good. Bev and Jim then turned to the Human Growth Foundation for help.² Through the work of this Foundation and the extraordinary commitment of these parents to the Foundation and their child, Samantha was able to receive human growth hormone injections.³ These injections coupled with other treatment have enabled Samantha to live not only a normal but remarkable life. Now a little over five-feet tall, Samantha, an honor student in high school and in college, is a medical doctor finishing her residency at a local hospital. A phenomenal tribute to the perseverance and courage of a mother, father and child!

In the hopes of repaying their debt for all of the help, support and encouragement Bev, Jim and Samantha received, they set up the S Foundation, a non-profit foundation named after Samantha, to aid children afflicted with Turner's Syndrome and their families. Much like other foundations, Bev, Jim and Samantha's goal was to provide a summer camp opportunity for these children and their families.

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1. Also known as Bonnevie-Ullrich syndrome, Gonadal dysgenesis, and Monosomy X. Turner syndrome is a genetic condition that occurs only in females. Female cells normally have two X chromosomes. In Turner syndrome, a female's cells are missing an X chromosome, or part of an X chromosome. There are a variety of signs and symptoms that can result, but the most common are short height, lack of developing ovaries, and infertility. Further information can be found through the National Institute of Health, Medline Medical Encyclopedia, *available at* <http://medlineplus.gov>.

2. The Human Growth Foundation helps children and adults with disorders related to growth or growth hormone through research, education, support and advocacy. Further information on the Human Growth Foundation can be found at their website, *available at* <http://www.hgfound.org>.

3. This is the same substance used by Barry Bonds of the San Francisco Giants Major League Baseball team. FAINARU-WADA & WILLIAMS, *GAME OF SHADOWS* (Gotham Books, 2006). Mr. Bonds used HGH for very different reasons and with very different results. *Id.*

Created in Florida, the S Foundation complied with all of the state registration requirements as well as the Internal Revenue Service regulations to become a non-profit foundation that could engage in fund-raising activities. Calling on a friend who owns a car dealership, Bev and Jim secured a fully loaded sports car for a fraction of the retail cost of the car. They then ventured to set up and publicize a raffle drawing for the car. The idea was to sell 1,000 raffle tickets at \$100 per ticket. By selling all of the tickets, participants would have a reasonable chance at winning the car and the S Foundation would net a healthy profit to be used for the summer camp program. Bev and Jim thought if they could succeed with just two or three of these raffles that many children and their families would benefit.

Bev and Jim spent a lot of their spare time traveling to shopping malls, events and exhibitions setting up their booth to sell raffle tickets. And they sold tickets! Then one afternoon while staffing their ticket booth, a potential raffle ticket buyer approached the booth and requested the remaining raffle tickets. Bev and Jim could not believe their good fortune and thanked the buyer. Bev then told the buyer that with 500 tickets remaining, the cost to receive the tickets would be \$50,000. The buyer then said he would not pay \$50,000 for the tickets and, in fact, by law, was entitled to the 500 tickets without paying any money. Bev and Jim were dumbfounded. To their knowledge, after speaking with lawyers and state government officials, they had never heard of such a law. This potential raffle ticket buyer then said that if Bev and Jim did not give him the remaining raffle tickets for free right then, he would contact the police department, have the raffle shut down, and put Bev and Jim in jail. Now, Bev and Jim were not only dumbfounded but also a little scared. They shut down the car raffle immediately but declined to give this person any raffle tickets.

It turns out that this particular potential raffle ticket buyer was acting on a tip from another person who was affiliated with a different charitable foundation who happened upon Bev and Jim's foundation raffle. It seems that the tipster's foundation had also been hassled by another charitable foundation in the same way, resulting in the termination of their raffle. The sad truth is that, under Florida law, this potential raffle ticket buyer and the tipster got it right! Bev and Jim, by law, must give away, without any donation or purchase, the remaining raffle tickets to whoever requests them! No good deed goes unpunished!

The purpose of this article is to figure out how such a result could be sanctioned by law. The first part of this article will provide a brief description of lotteries or "games of chance" throughout history. The

second part of this article will overview Florida law concerning the operation of raffles or other games of chance by charitable organizations.⁴ This section will specifically focus on the unusual “catch 22” provisions in the Florida statutes dealing with the purchase of raffle tickets. The third and concluding part of this article will suggest a solution to the problem created by the Florida law.

THE HISTORY OF “GAMES OF CHANCE”

Lotteries and other games of chance have been around for centuries dating back to biblical times when raffles were used to divide up land.⁵ The first modern lottery, that is where a person bought a chance to win a prize, occurred in Italy during the Middle Ages.⁶ The purpose of this first lottery or raffle was to stimulate business for local merchants.⁷ People would pay money and then gather in the marketplace to see who won. This interest in the lottery induced people to visit the marketplace for the drawing and then inevitably buy goods from the merchants. The first lottery to pay out a cash prize occurred in Florence, Italy, in 1530.⁸ It should be noted, the proceeds from this first lottery went to the government.⁹ Shortly thereafter, “Lotto-Fever” spread throughout Europe. France’s first lottery was established in 1533 followed by England’s government sponsored lottery in 1566.¹⁰ The lottery landed in the United States in 1612 as a means for England to fund the Virginia Company’s Jamestown Settlement.¹¹

Firmly rooted in the English tradition, American Colonies embraced the lottery as a prime source of funding public works projects like roads and bridges.¹² Private entrepreneurs jumped on the lottery bandwagon too. In response to this rise in private lotteries, colonial governments outlawed

4. See *infra*, notes 32 and 33 and accompanying text.

5. “Be sure that the land is distributed by lot. What each group inherits will be according to the names for its ancestral tribe.” *Numbers* 26:55 (New International Version).

6. Chad Hills, *A History of the Lottery*, FOCUS ON SOCIAL ISSUES, Jan. 22, 2004, <http://www.citizenlink.org/FOSI/gambling/lottery/A000001228.cfm>.

7. CHARLES C. CLOTFELTER & PHILIP J. COOK, *SELLING HOPE: STATE LOTTERIES IN AMERICA* 33-39 (Harvard University Press 1989).

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. CLOTFELTER & COOK, *supra* note 7, at 34. The State of Oregon is one example of a modern lottery program that has funded diverse public projects ranging from small business assistance to funding state parks to restoring the salmon population to the state’s waters. See <http://www.oregonlottery.org/owins/textstowins.htm>.

private, not public, lotteries.¹³ However, the line between what constituted a private versus a public lottery was never clearly defined. Hence, public and private lotteries flourished.¹⁴ Perhaps most noteworthy is that both public and private lotteries were used to support the American troops during the Revolutionary War.¹⁵

Some objected to public and private lotteries on religious grounds.¹⁶ Yet, the large number of public and private lotteries that successfully operated throughout the colonial and post Revolutionary War time indicated that religious beliefs were not a significant impediment to the lottery players.¹⁷ Lotteries were considered by most Americans to be “charitable contributions for public purposes.”¹⁸ If the operators of such lotteries also profited, so be it. A. R. Spofford, a noted nineteenth century author, wrote that lotteries were:

not regarded at all as a kind of gambling; the most reputable citizens were engaged in these lotteries, either as selected managers or as liberal subscribers. It was looked upon as a kind of voluntary tax . . . with a contingent profitable return for such subscribers as held the lucky numbers. All the subscribers and managers contributed their influence to secure the sale of all tickets, so as to insure the largest return for the object to which the funds remaining above the prizes drawn were pledged.¹⁹

As happens so many times, the good accomplished through public and private lotteries became overshadowed by the bad that resulted from corrupt lottery operators. Private lotteries and raffles were being used to defraud the public.²⁰ Some lottery operators could not resist stealing lottery money. Canceling lottery drawings without refunding the money collected, or reducing the number of prizes awarded in lottery drawings became favorite methods for unregulated lottery operators to profit.²¹ As this wave of lottery corruption spread throughout the nineteenth century, opposition to lotteries grew. Denounced as morally corrupt, dishonestly operated and leading to economic distress and gambling addiction, first state

13. CLOTFELTER & COOK, *supra* note 7, at 34.

14. *Id.*

15. *Id.*

16. *See id.* at 33, 35, 37.

17. *See id.* at 20.

18. *Id.* at 35.

19. S. DOC. NO. 52-57, at 174-75 (1892).

20. CLOTFELTER & COOK, *supra* note 7, at 37.

21. *Id.*

governments and then the federal government banned lotteries nationwide.²²

It was not until 1964 that government-sanctioned lotteries reappeared.²³ Under strict government regulation designed to insure the integrity of the game, lotteries crept back into the American fabric. Even during the time of “prohibition,” people were still able to participate in church sponsored raffles and the like if local government laws permitted such activities.²⁴ Perhaps more importantly, state governments viewed lotteries as a means of raising revenue without raising taxes.²⁵ The once controlling moral objection to lotteries has now been overshadowed by the perceived need of local and state governments to run lotteries to fund government operations and for charitable organizations to run lotteries and raffles to fund social programs.²⁶

THE FLORIDA LAW

Florida prohibits the use of lotteries.²⁷ A lottery falls under the broad definition of a “drawing by chance.”²⁸ A drawing by chance, or “game of chance” as it is more regularly known, has long been defined as a device or scheme that, in return for consideration or value, awards a prize by chance.²⁹ Therefore, by this definition, a drawing by chance not only includes a lottery but also a raffle just like the one operated by the S

22. *Id.*

23. *Id.* at 38. In 1964, after 27 years of annual lottery bills in the state legislature, New Hampshire introduced a lottery, approved by 76 percent of the voters in a public referendum. The lottery was promoted as a “Sweepstakes” tied to horse racing to avoid the 70 year-old state ban on lotteries. Hills, *supra* note 6.

24. Hills, *supra* note 6.

25. CLOTFELTER & COOK, *supra* note 7, at 33.

26. *See id.*

27. FLA. STAT. § 849.09 (1) (a) (2006) (“It is unlawful for any person in this state to: (a) set up, promote, or conduct any lottery for money or for anything of value. . . .”).

28. § 849.0935(a).

“Drawing by chance” or “drawing” means an enterprise in which, from the entries submitted by the public to the organization conducting the drawing, one or more entries are selected by chance to win a prize. The term “drawing” does not include those enterprises, commonly known as “matching,” “instant winner,” or “preselected sweepstakes,” which involve the distribution of winning numbers, previously designated as such, to the public.

Id.

29. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 721 (4th ed. 2000) (“A game, usually played for money or stakes, in which the winner is determined by a chance event, as by drawing numbers or throwing dice.”).

Foundation.³⁰ One exception to Florida's prohibition against lotteries is the Public Education Lottery Act.³¹ This statutorily-created lottery is run by the Florida State Lottery Commission and was designed to augment existing state appropriations for public education.³²

Section 849.0935 of the Florida Statutes goes on to permit charitable organizations that qualify for an exemption from federal income tax as a non-profit entity under 26 U.S.C. § 501(c)(3), (4), (7), (8), (10) or (19) to conduct drawings by chance.³³ Any such drawing must be conducted according to the provisions of this section as well as the requirements of Chapter 496 of the Florida Statutes.³⁴

Chapter 496 sets out the registration requirements for solicitation of charitable contributions.³⁵ The five-page registration statement accompanied by the information packet is designed to ensure the legitimacy of the charitable organization and the drawing by chance.³⁶ Coupled with the rules for conducting a drawing by chance contained in section 849.0935, this statutory registration scheme requires full and complete disclosure of all aspects of the charitable organization and its conduct of the drawing by chance.³⁷ Absent compliance, both section 849.0935 and Chapter 496 of the Florida Statutes provide for legal sanctions.³⁸ A violation of section 849.0935 is punishable as a second-degree misdemeanor.³⁹ A violation of Chapter 496 relating to the registration and reporting requirements for charitable solicitations is

30. § 849.035 (7) (“[A]ny organization or other person who sells or offers for sale in this state a ticket or entry blank for a raffle or other drawing by chance, without complying with the requirements of [this section], is guilty of a misdemeanor of the second degree. . . .”).

31. FLA. STAT. § 24.122 (2006).

Any state or local law providing any penalty, disability, restriction, or prohibition for the possession, manufacture, transportation, distribution, advertising, or sale of any lottery ticket, *including chapter 849*, shall not apply to the tickets of the state lottery operated pursuant to this act; nor shall any such law apply to the possession of a ticket issued by any other government-operated lottery.

Id. (emphasis added).

32. See § 24.102.

33. § 849.0935(1)(b), (2).

34. § 849.0935(2). Chapter 496 is Florida's “Solicitation of Contributions Act.” FLA. STAT. §§ 496.401-.424 (2006).

35. FLA. STAT. § 496.405 (2006).

36. A registration application as well as answers to Frequently Asked Questions is available at the Florida Department of Agriculture and Consumer's web site: <http://doacs.state.fl.us/onestop/forms/10100.pdf>.

37. See *id.* at 1.

38. §§ 849.0935(7), 496.417.

39. § 849.0935(7) (“Any organization which engages in any act or practice in violation of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.”).

punishable as a felony and constitutes an unfair or deceptive trade practice in violation of Chapter 501, part II of the Florida Statutes.⁴⁰ Furthermore, a violation of section 849.0935 would also constitute a per se violation of the Florida Deceptive and Unfair Practices Act.⁴¹

This elaborate cross-system of registration, reporting and legal sanctions plus the very specific directions for the conduct of any drawing by chance reveals the legislature's discomfort with charitable organizations taking charitable contributions through drawings by chance. Rather than just an outright ban, the Florida legislature tried to find some middle ground by permitting, in this limited and controlled context, drawings by chance by charitable organizations.⁴² The problem is that in the Florida legislature's zeal to protect the public from corrupt lottery operators, it missed its mark.

Section 849.0935(3)(e) of the Florida Statutes specifically requires any charitable organization conducting a drawing by chance to conspicuously disclose that no purchase or contribution is necessary to receive a drawing ticket.⁴³ In addition, section 849.035(4)(b) prohibits any charitable organization conducting such a raffle from requiring a contribution for participation in the raffle.⁴⁴ Section 849.0935(4)(i) also mandates that a charitable organization may not condition any prize giveaway on receipt of a donation or contribution.⁴⁵ Taken together, these three statutory provisions state that a charitable organization conducting a

40. § 496.416.

Except as otherwise provided in ss. 496.401-496.424, and in addition to any administrative or civil penalties, any person who willfully and knowingly violates ss. 496.401-496.424 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For a second or subsequent conviction, such violation constitutes a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

§ 496.417.

41. § 496.416 ("Any person who commits an act or practice that violates any provision of ss. 496.401-496.424 commits an unfair or deceptive act or practice or unfair method of competition in violation of chapter 501, part II, and is subject to the penalties and remedies provided for such violation.").

42. A detailed analysis of rules and requirements to conduct a charitable solicitation are summarized in Kent J. Perez, *Florida Statute § 849.0935 Drawings by Chance*, 70-DEC FLA. B.J. 63 (1996).

43. § 849.0935 ("All brochures, advertisements, notices, tickets, or entry blanks used in connection with a drawing by chance shall conspicuously disclose: . . . (e) that no purchase or contribution is necessary.").

44. § 849.0935 ("It is unlawful for any organization . . . (b) to require an entry fee, donation, substantial consideration, payment, proof of purchase, or contribution as a condition of entering the drawing or of being selected to win a prize.").

45. § 849.0935 ("It is unlawful for any organization . . . (i) to condition the acquisition or giveaway of any prize upon the receipt of voluntary donations or contributions.").

charitable solicitation effort, in compliance with Florida law, through the use of a drawing or raffle, cannot require a donation or contribution in order to participate in the raffle.⁴⁶ This statutory scheme effectively discourages charitable organizations from conducting drawings by chance.

Charitable organizations now find themselves faced with the big risk. Do they, like the S Foundation, conduct a raffle in the hope that enough people will donate money to cover the cost of the prize to be given away? Do they rely on the salesmanship of ticket sellers to sell tickets? Do they take the chance, violate the law, and require a contribution to get a raffle ticket and hope not to get caught? What do they do when representatives from a competing charity demand all of the remaining raffle tickets? How do they answer the complaint of a losing raffle ticket holder that the winner did not even pay for the winning ticket? Do they just rely on the good will and honesty of people to give money for a raffle ticket? The nightmare for the S Foundation and other charitable organizations is that the raffle does not cover the cost of the prize and the charity loses money on the raffle.

Perhaps the answer to all of these rhetorical questions is “yes.” Although the S Foundation and other charitable organizations do not need to use raffles and the like to raise money, the prospect of a winning raffle ticket is often times more attractive to potential charitable givers than merely asking or begging for a charitable donation. Consequently, if the prize is good enough, then a charitable organization may realistically hope to sell out its raffle tickets. In that event, no raffle ticket holder will have a valid complaint because the winner is a raffle ticket buyer too. Furthermore, based on the limited resources of state and local governments, it is unlikely that enforcement officials are patrolling the shopping malls and other events for raffle ticket violators.

However, the seriousness of the legal penalties for violation of sections 849.0935, 501.201 through .976, and Chapter 496 of the Florida Statutes should give every raffle ticket operator pause. The new factor to consider in all of this is the competing charity that could well sabotage the raffle drawing. Yet, just how many competing charities would prey on other charities cannot be predicted. In uneven economic conditions where charitable contributions are down, the fight for a piece of the remaining charitable donations pie could make this a big risk for smaller charities like the S Foundation. Furthermore, there is the moral issue that by requiring a donation or contribution to participate in a charitable raffle, the charitable organization is violating the Florida law.⁴⁷ It seems so ironic and sad that

46. 93 Op. Att’y Gen. Fla. 85 (1993).

47. See FLA. STAT. § 849.0935(4)(b) (2006).

in a time when volunteerism and charitable fundraising is championed and encouraged as “1,000 points of light” to help others in need, these points of light may be battling each other or be effectively dimmed by Florida law.

THE SOLUTION

First, the solution for charitable foundations, like the S Foundation, is not to ignore the law and hope not to get caught, regardless of how successful that course of action may be. The solution rests with either finding a loophole in the Florida law or in changing the Florida law to permit charitable, non-profit organizations to operate a legitimate and profitable drawing by chance.

One possible solution to this issue may hinge on Florida’s definition of a drawing by chance. A prohibited drawing by chance, under Florida law, requires three elements: a prize, an awarding of the prize by chance, and consideration.⁴⁸ Therefore, if a charitable organization engages in a charitable solicitation campaign that does not involve a drawing by chance, then the prohibitions concerning a drawing by chance would not apply. Perhaps this can be accomplished by awarding a prize to every purchaser of a raffle ticket. In this way, there is no drawing by chance because every raffle ticket holder wins a prize. The kicker to this argument is that not every prize awarded to a raffle ticket holder would be the same or of the same value. For example, the S Foundation might award a sports car to one raffle ticket holder while the other raffle ticket holders receive prizes of lesser value. Although the prizes are of different values, a prize is awarded to every person who purchases a “raffle” ticket. Therefore, it might be argued that it is the purchase of the “raffle” ticket, not the drawing by chance, that entitles the purchaser to a prize. The rub with this proposed solution is that even if every raffle ticket buyer received a prize, the raffle ticket buyer who wins the bigger prize would still have to be selected “by chance.”

Another possible solution to this issue might be found in a Florida Attorney General’s opinion issued in 1990.⁴⁹ In this Opinion, Attorney General Robert Butterworth concluded that a contest of skill, such as a hole-in-one golf contest, where contestants pay an entry fee to participate but the entry fee does not make up the prize for a hole-in-one, does not violate the gambling laws of Florida.⁵⁰ The key to this opinion and perhaps

48. Little River Theatre Corp. v. State, 185 So. 855, 868 (Fla. 1939).

49. 90 Op. Att’y Gen. Fla. 179 (1990).

50. *Id.*

a key to avoiding the application of section 849.0935 of the Florida Statutes is that the contest awarding a prize for consideration is not a drawing by chance but a game of skill.⁵¹ The trick for charitable organizations then would be to turn its fundraising efforts into predominantly a game of skill rather than a drawing by chance.⁵² By doing so, the charitable organization could circumvent the requirements and prohibitions applicable to a drawing by chance.⁵³

The key question then becomes how do you turn a regulated raffle into an unregulated game of skill? Perhaps that is not the correct question, because under the 1990 Florida Attorney General's Opinion, the skill of the game need merely predominate over the chance aspects of the game.⁵⁴ If a precondition to receiving a raffle ticket is that a purchaser must "win" at a game of skill, then a charitable organization might be able to argue that the game of skill predominates over the drawing by chance to win the raffle prize.

Per the 1990 Attorney General's Opinion, the game of skill would have to be a genuine game of skill. For example, the "duck pond" carnival game where a contestant wins by plucking a plastic duck out of a tub of

Accordingly, I am of the opinion that a contest of skill, such as a hole-in-one golf contest, where the contestant pays an entry fee, which does not make up the prize, for the opportunity to win a valuable prize by the exercise of skill, does not violate the gambling laws of this state.

Id. at 2.

51. *Id.*

While the elements of a prize and consideration are present in a contest of skill in which the contestants pay an entry fee for the opportunity to win, it is the skill of the contestant, rather than chance that is the predominant element in the selection of the winner. This office has stated that contests in which the skill of the contestant predominates over the element of chance do not constitute lotteries.

Id. at 1.

52. *Id.*

We turn next to F.S.A. s. 849.14 which prohibits betting on the result of a trial or contest of skill. It is the [Attorney General's] contention that the playing of [games of skill] falls unquestionably within the bounds of this provision But the more logical interpretation is that the legislature intended by enacting F.S.A. s. 849.14 to proscribe "wagering" on the results of ball games, races, prize fights and the like as opposed to "playing" games of skill for prizes To adopt defendant's construction we would have to find all contests of skill or ability in which there is an entry fee and prizes to be gambling.

Id. at 1 (citing *Faircloth v. Cent. Fla. Fair, Inc.*, 202 So. 2d 608, 609 (Fla. Dist. Ct. App. 1967)).

53. *Faircloth*, 202 So. 2d at 609.

The list could be endless: golf tournaments, dog shows, beauty contests, automobile racing, musical competition, and essay contests, to name a few. No one seriously considers such activities to be gambling The divergent treatment of games of skill at a fair and a golf tournament is a distinction without a difference.

Id.

54. 90 Op. Att'y Gen. Fla. 179 (1990).

water filled with plastic ducks would probably not qualify as genuine game of skill. However, bowling a strike, sinking a putt, making a basket, or throwing darts would seem to have the requisite skill to be classified as a game of skill.⁵⁵ The rub to this argument is again, that even though successfully competing in the game of skill is a pre-condition to receipt of a raffle ticket, the awarding of the prize still hinges on the chance a particular raffle ticket is chosen.

Perhaps the charitable organization could only award the top prize to the person who performed the best at the game of skill. For example, only the person who bowled the most strikes or made the most putts is entitled to receive the top prize. Moreover, if every person who is successful at the game of skill receives a prize with the top prize awarded to the most skilled, then even though a person paid for the “chance” to participate in the game of skill, the prize is not awarded “by chance.” In this scenario, the game of skill predominates over the element of chance traditionally associated with a prize giveaway in a raffle.

If a charitable organization combines the fundraising advantages of a raffle with the game of skill aspect into a charitable solicitation, then the argument for avoiding the prohibitions contained in section 849.0935 may be quite strong. For example, if the S Foundation incorporated a game of skill, like sinking a putt, as a precondition to receiving a raffle ticket and awarded a prize to every raffle ticket purchaser who made the putt with a top prize to the raffle ticket buyer who sank the most putts, then perhaps that charitable organization’s activity would not constitute predominately a drawing by chance in which a prize is awarded after the payment of consideration.

Although the foregoing argument has merit, there is the risk that such arguments may fail or at least, open the door for a charitable organization to be sued or prosecuted for violating Florida law. Frankly, it seems a bit silly to have to go through such legal gymnastics when the simple solution is for the Florida legislature to make a choice. If the legislature decides that charitable organizations should not be able to conduct a simple raffle, then just say so and put an end to the dilemma for charitable organizations. However, such a prohibition would be very difficult to effectively enforce. The amount of resources required to police every church, school or other similar raffle would be overwhelming. Absent such a commitment of

55. Interestingly, bowling alone is specifically exempted from the strictures of Chapter 849(1). FLA. STAT. § 849.141(1) (2006) (“Nothing contained in this chapter shall be applicable to participation in or the conduct of a bowling tournament conducted at a bowling center which requires the payment of entry fees, from which fees the winner receives a purse or prize.”).

money and people, such a law would be ineffective and at best, randomly enforced.

More importantly, the Florida legislature has already put in place a system of registration, reporting and disclosure that is designed to protect consumers and to ensure the legitimacy of charitable solicitations.⁵⁶ Enforcement of these already existing statutes, administrative rules and regulations is necessary to carry out the legislative purpose of permitting charitable solicitations, even through games of chance, but only those kinds of charitable solicitations that are regulated and free of abuse.

Based on existing legislation, the common sense solution is to permit games of chance to be a part of the methods available to properly registered charitable organizations. It follows that since the legislature has already set up a detailed system of preconditions and conduct rules, complying charitable organizations should be able to conduct raffles that are regulated by these statutes. It seems more than a little disingenuous for the legislature to hold out the prospect of charitable organizations raising money through raffles and other games of chance after going through the steps to properly register, disclose, and report only to have that prospect contradicted and snared by the “catch 22” terms of section 849.0935 of the Florida Statutes. This kind of disjointed legislative approach breeds confusion about the law and frustration at its incongruity. Ultimately, even the most motivated and well-intentioned people who really want to help others through charitable fundraising efforts sadly decline to get involved. Rather than punish people for attempting to help others, all of us, including legislators should encourage, enable and celebrate those people and their efforts. We should all be ashamed if we do less.

56. See §§ 496.401-.424.