IN THE SUPREME COURT OF FLORIDA

IN RE:

ADVISORY OPINION TO THE ATTORNEY GENERAL - SAVE OUR EVERGLADES TRUST FUND

CASE NO. 83,301

_____/

On a request by the Attorney General for an advisory opinion on the validity of an initiative petition circulated under Art. XI, sec. 3

BRIEF OF SUGAR CANE GROWERS COOPERATIVE OF FLORIDA ON THE INVALIDITY OF THE "SAVE OUR EVERGLADES" INITIATIVE

ROBERT P. SMITH
Hopping Boyd Green & Sams
123 South Calhoun Street (32301)
Post Office Box 6526
Tallahassee, Florida 32314

Attorney for Sugar Cane Growers Cooperative of Florida, Inc.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATE CASES

DOCKETED CASES

FEDERAL STATUTES

FLORIDA CONSTITUTION

FLORIDA STATUTES AND RULES

STATEMENT OF THE CASE AND OF THE FACTS

1. Introduction.

The Attorney General's letter of March 8, 1994, invoked the Court's jurisdiction under Art. V, Sec. 3(b)(10) to render an advisory opinion of the Justices on appropriate issues pertaining to the so-called "Save Our Everglades" initiative of its sponsor, Save Our Everglades, Inc. *See* Secretary of State's "format approval" letter to the sponsor, App. A to this brief.

This brief is filed by Sugar Cane Growers Cooperative of Florida, Inc., in response to the Court's interlocutory order entered March 11, 1994, inviting briefs from interested parties. As its name implies, the Cooperative is wholly owned by sugar cane growers in the Everglades Agricultural Area of the Central and South Florida Flood Control Project. The Cooperative serves member farmers in harvesting, milling and related market functions. As a "first processor of sugarcane" the Cooperative is a likely target for the tax which "Save Our Everglades" would impose on cane farmers in the EAA.

The EAA was created and dedicated to agricultural use as part of the Central and Southern Florida Flood Control Project which Congress authorized by the Flood Control Act of June 30, 1948, Pub. L. No. 80-858. The antecedents and purposes of the legislation, and of the EAA particularly, are documented in the COMPREHENSIVE REPORT ON CENTRAL AND SOUTHERN FLORIDA FOR FLOOD CONTROL AND OTHER PURPOSES, H.R. DOC. No. 643, 80th Cong., 2d Sess. (1948).

The Attorney General's authority is to solicit an "advisory opinion regarding the compliance of the text of the

proposed amendment or revision with s. 3, Art. XI of the State Constitution and the compliance of the proposed ballot title and substance with s. 101.161." Sec. 16.061, Fla. Stat. (1993). Article V, Sec. 3(b)(10) seemingly enfolds that statutory limitation and the Justices have consistently observed it, most recently in In Re: Advisory Opinion to the Attorney General - Restricts Laws Related to Discrimination, So.2d , 19 Fla. L. Weekly S109 (Mar. 3, 1994). [1]

2. The "FULL TEXT OF THE PROPOSED AMENDMENT"; the name of the initiative and its proposed ballot title; the "substance" or summary which would serve as ballot proxy for the "FULL TEXT."

As appears from the official petition attached to the Secretary of State's format approval letter, App. A to this brief, the sponsor coined the slogan "SAVE OUR EVERGLADES" as the "caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of." By operation of statute, that slogan became the ballot title, and the Secretary of State ministerially accepted it. Sec. 101.161(1), *see also* Sec. 15.21, Fla. Stat (1993).

The "FULL TEXT OF PROPOSED AMENDMENT," which is the object of the Court's single-subject inquiry, is likewise identified as a matter of law. Sec. 100.371, Fla. Stat.; the Secretary of

---

[1] Restricts Laws at S110: "Our advisory opinion is limited to determining whether the proposed amendment complies with article XI, section 3 of the Florida Constitution and section 101.161, Florida Statutes (1993)." The Justices declined to "consider all of the facial constitutional issues that may be implicated by the petition." Id. at fn. 1.

State's Rule 1S-2.009(1), Fla. Admin. Code; and Secs. 15.21 and 16.061, Fla. Stat. The "FULL TEXT" is exactly what the sponsor submitted to the Secretary of State under a conspicuous headline in the petition form, "FULL TEXT OF PROPOSED AMENDMENT.". Rule 1S-2.009(1) requires that the petition "conspicuously contain the full text of the amendment being proposed."

The FULL TEXT of the proposed amendment is thus as quoted below from the petition form, App. A, with its major findings, declarations and enactments highlighted thusly:

> "FULL TEXT OF PROPOSED AMENDMENT:
>
> "(a) The people of Florida believe that protecting the Everglades Ecosystem helps assure clean water and a healthy economy for future generations. The sugarcane industry in the Everglades Ecosystem has profited while damaging the Everglades with pollution and by altering water supply. Therefore, the sugarcane industry should help pay to clean up the pollution and to restore clean water. To that end, the people hereby establish a Trust, controlled by Florida citizens, dedicated to restoring the Everglades Ecosystem, and funded initially by a fee on raw sugar from sugarcane grown in the Everglades Ecosystem.
>
> "(b) Article X, Florida Constitution, is hereby amended to add the following:
>
> "'Section 16. Save Our Everglades Trust Fund.
>
> "'(a) There is established the Save Our Everglades Trust Fund (Trust). The sole purpose of the Trust is to expend funds to recreate the historical ecological functions of the Everglades Ecosystem by restoring water quality, quantity, timing and distribution (including pollution clean up and control, exotic species removal and control, land acquisition, restoration and management, construction and operation of water storage and delivery systems, research and monitoring).

"'(b) The Trust shall be administered by five Trustees. Trustees shall be appointed by the governor, subject to confirmation by the Senate, within thirty days of a vacancy. Trustees' appointments shall be for five years; *provided that* the terms of the first Trustees appointed may be less than five years so that each Trustee's term will end during a different year. Trustees shall be residents of Florida with experience in environmental protection, but Trustees shall not hold elected governmental office during service as a Trustee. Trustees may adopt their own operating rules and regulations, subject to generally-applicable law. Disputes arising under this Section shall be first brought to a hearing before the Trustees, and thereafter according to generally-applicable law. Trustees shall serve without compensation but may be reimbursed for expenses.

"'(c) The Trust shall be funded by revenues which shall be collected by the State and deposited into the Trust, all of which funds shall be appropriated by the Legislature to the Trustees to be expended solely for the purpose of the Trust. Revenues collected by the State shall come from a fee on raw sugar from sugarcane grown within the Everglades Ecosystem. The fee shall be assessed against each first processor of sugarcane at a rate of $.01 per pound of raw sugar, increased annually by any inflation measured by the Consumer Price Index for all urban consumers (U.S. City Average, All Items), or successor reports of the United States Department of Labor, Bureau of Labor Statistics or its successor, and shall expire twenty-five years after the effective date of this Section.

(d) For purposes of this Section, the Everglades Ecosystem is defined as Lake Okeechobee, the historical Everglades watershed west, sought and east of Lake Okeechobee, Florida Bay and the Florida Keys Coral Reef, *provided that* the Trustees may refine this definition.

"'(e) Implementing legislation is not required for this Section, but nothing shall

> prohibit the establishment by law or otherwise of other measures designed to protect or restore the Everglades. If any portion of this Section is held invalid for any reason, the remaining portion of this Section shall be severed from the void portion and given the fullest possible force and application. This Section shall take effect on the day after approval by the electors.'"

By law, the sponsor's "wording of the substance" of the amendment is to appear on the ballot as proxy for the "FULL TEXT." Like the ballot title, the "substance" is "prepared by the sponsor and approved by the Secretary of State" as to format. Secs. 101.161(1), (2), 100.371, Rule 1S-2.009(1), Fla. Admin. Code. The "wording of the substance" that the sponsor prepared for "SAVE OUR EVERGLADES" is stated in the official petition, App. A, as follows:

> "Creates the Save Our Everglades Trust to restore the Everglades for future generations. Directs the sugarcane industry, which polluted the Everglades, to help pay to clean up pollution and restore clean water supply. Funds the Trust for twenty-five years with a fee on raw sugar from sugarcane grown in the Everglades Ecosystem of one cent per pound, indexed for inflation. Florida citizen trustees will control the Trust."

3. The Attorney General omitted from his letter to the Court both the name of the initiative (its ballot title) and the headline in the petition which identifies subs. (a) as well as subs. (b) as the "FULL TEXT OF PROPOSED AMENDMENT." This omission caused a misnomer in the casestyle of the Court's initial Order, and may cause further confusion on the substantive issues.

Some potential confusion threatens this case at the outset, due to inadvertent omissions in the Attorney General's March 8 letter soliciting the Justices' advisory opinion.

The Attorney General's letter to the Court quotes the full text of the proposed amendment but characterizes the quoted text not as the "FULL TEXT OF PROPOSED AMENDMENT" but only as a quotation from "the petition." The quoted text is indeed part of what "the petition provides," true enough, but the Attorney General's quotation is materially incomplete: it omitted the mandatory phrase, "FULL TEXT OF PROPOSED AMENDMENT," which appears in the petition at the head of matter quoted. *Supra* p. 3; also App. A-2 attached. That headline was required by the Secretary of State to identify "the text of the proposed amendment," and to identify it indubitably. Secs. 100.371(3), 15.21, Fla. Stat. (1993). Rule 1S-2.009(1) requires that any petition "shall conspicuously contain the full text of the amendment being proposed."

The letter's partial quotation of what "the petition provides," and its omission of the headline "FULL TEXT OF PROPOSED AMENDMENT" from its proper place at the head of the text quoted, leaves one guessing what part of the quoted text is the "FULL TEXT OF PROPOSED AMENDMENT" and what part (if any) is merely what "the petition" says about the "FULL TEXT." The danger of course is that the grossly political assertions in subs. (a) of the "FULL TEXT," written directly below the authenticating headline, may be overlooked as political fluff or a disposable recital, not as a genuine part of the indivisible "FULL TEXT OF PROPOSED AMENDMENT" which being destined for the Constitution must bear single-subject scrutiny in its totality.

The Attorney General's letter does not forward the petition form approved by the Secretary of State. App. A. Nor does the letter by reference to the petition form or otherwise notify the Court that the sponsor proposed and the Secretary of State ministerially accepted the exhortation "SAVE OUR EVERGLADES" as "the caption . . . by which the measure is commonly referred to or spoken of," therefore as the ballot title for use on the actual ballot. See App. A attached; citations *supra* p. 2.

Already the Attorney General's omissions have caused some confusion. It resulted in a casestyle in the Court's Order of March 11, 1994, which misnames the initiative and the ballot title. The name and title is not "SAVE OUR EVERGLADES TRUST FUND," as the casestyle represents, it is "SAVE OUR EVERGLADES." And the "FULL TEXT OF PROPOSED AMENDMENT" which is in issue here is not subs. (b) alone, which would entitle its own subtext "SAVE OUR EVERGLADES TRUST FUND" when and if added to Art. X, Sec. 16. The "FULL TEXT" here for single-subject and other scrutiny includes subs. (a) as well. The sponsor adds to the confusion by not have specifically designated subs. (a) of the "FULL TEXT" to be inserted in Art X, Sec. 16 or, indeed, in any other designated Article and Section of the Constitution.

The misnomer in the casestyle (now likely carried into the captions of all briefs filed March 31) should be corrected. But it is far more important that the Court, by correcting the casestyle misnomer, correct also any misimpression among the

parties of what, as a matter of law, constitutes the "FULL TEXT OF PROPOSED AMENDMENT" now to be addressed by the "advisory opinion regarding the compliance of the text of the proposed amendment or revision with s. 3, Art. XI of the State Constitution." Sec. 16.061, Fla. Stat.

Since subs. (a) with its colorful language is indisputably, as a matter of law, part of the "FULL TEXT" here for consideration, no further argument of that point should be necessary. But if any further proof were necessary, it is supplied by the sponsor's "wording of the substance" and the Secretary of State's ballot summary of the "FULL TEXT," which summarizes subs. (a) as well as subs. (b) of the proposal, i.e., claiming that "the sugarcane industry, which polluted the Everglades," should pay. That accusation is not embodied in subs. (b) of the initiative text.

That the sponsor designated no destination Article in the Constitution for subs. (a) may be reason enough to invalidate the whole proposal, but the sponsor's creation of more confusion is no reason to regard the "FULL TEXT" as less than what it is in law, or to pretend that these proposed additions to the Constitution are less objectionable than they really are.

Summary of the Argument

I. A. Judged by the authentic single-subject test prescribed by Fine v. Firestone (1984), "SAVE OUR EVERGLADES" impacts, changes and performs functions committed to the legislative, executive and judicial branches, and does so without

advising the public of its diminution of those committed powers, and of the sections in Article III, IV and V from which those powers are transferred. The initiative is invalid.

B. Judged by the anti-logrolling principles endorsed by several of the Court's decisions, "SAVE OUR EVERGLADES" patently appeals to various disparate classes of voters to put aside their disparate scruples on certain subjects in the initiative, in order to satisfy their greater interest in other distinct subjects in the initiative. The proposal is invalid.

II. The ballot title "SAVE OUR EVERGLADES" is a political slogan and an incitement. The ballot summary castigating the sugar cane industry is more of the same. Both offend the fairness and objectivity standards of this Court's decisions. For this reason too, the proposal is invalid.

ARGUMENT

The standard for excluding an initiative proposal from the ballot, either for a single-subject violation or for misleading ballot summary or title, is that it be found "clearly and conclusively defective." Grose v. Firestone, So.2d 303, 305 (Fla. 1982); Weber v. Smathers, 338 So.2d 819, 821 (Fla. 1976).

I. The proposed amendment violates the single-subject rule of Art. XI, Sec. 3: (A) by impacting and performing essential functions of three branches of government and multifariously affecting unidentified Articles and Sections now governing those functions; and (B) by logrolling distinct and independent subjects to attract a combined affirmative vote by voters of divided opinions on those subjects.

"[A]ny such revision or amendment shall embrace but one subject and matter directly connected therewith." Art. XI, Sec. 3, Fla. Const.

The provision regulating citizens' initiatives must be read in context of a Constitution that provides not one but four methods for constitutional revision - the other three being unconstrained by the single-subject rule. Article XI, Section 1 authorizes proposals for "amendment of a section or revision of one or more articles, or the whole, of this constitution," by three-fifths of each house; Section 2 allows constitution revision commissions to propose "revision of this constitution or any part of it"; and Section 4 allows constitutional conventions to propose "revision of the entire constitution."

A. The "Save Our Everglades" proposal impacts and performs essential functions of the legislative, executive and judicial branches of government and it does not call the electorate's attention to its diminution of those Article III, IV and V powers.

1. *Fine v. Firestone* (1984) remains the authentic statement of the function-of-government test for single-subject violations.

Fine v. Firestone, 448 So.2d 984 (Fla. 1984), has proved its vitality as the authentic statement of the single-subject rule. *See*, most recently, In Re:Advisory Opinion to the Attorney General - Restricts Laws Related to Discrimination, So.2d , 19 Fla. L. Weekly S109 (Mar. 8, 1994).

Fine did not entirely recede from the more tolerant single-subject view expressed by Floridians, [2] as Justice Shaw would have preferred. [3] But certainly Fine appropriated what ***did*** survive from Floridians - its "functional rather than locational" test - to a sterner usage. Whereas Floridians arguably holds that any plausible umbrella term - "Everglades Restoration," say - will admit a multisubject proposal to the ballot, Fine held that "CITIZENS' CHOICE ON GOVERNMENT REVENUE" to limit increases in state and local revenues to a percentage of the Consumer Price Index, "includes at least three subjects, each of which affects a separate existing function of government." 448 So.2d 986 (emph. added):

> First, ***it limits how governments can tax***, thereby affecting the general operation of state and local government. Second, ***it restricts all government user-fee operations***, such as garbage collection, water, electric, gas, and transportation services which are paid for by the users of the services. Third, ***it affects the funding of capital improvements through revenue bonds***, which are financed from revenue generated by the capital improvements.

Fine elaborated the "functional not locational" single-subject test this way: an initiative which would "affect" an "existing function of government" may properly "affect" only a single such function; and if that function is now controlled by

---

[2] Floridians Against Casino Takeover Let's Help Florida, 363 So.2d 337 (Fla. 1978).

[3] "We should recede from the unrealistic standard of review in Weber and Floridians." 448 So.2d at 998 (Shaw, J., concurring).

multiple sections of the Constitution, the text of the initiative must identify the multiple sections so affected:

• "The single-subject requirement in article XI, section 3, mandates that the electorate's attention be directed to a change regarding *one specific subject of government* to protect against multiple precipitous changes in our state constitution. This requirement avoids voters having to accept part of an initiative proposal which they oppose in order to obtain a change in the constitution which they support." Fine, 448 So.2d at 988 (emph. added). "[T]he single-subject restraint . . . is intended to direct the electorate's attention to *one change which may affect only one subject* and matters directly connected therewith . . . . Id. at 989 (emph. added).

• " . . . and matters directly connected therewith, *and that includes an understanding by the electorate of the specific changes in the existing constitution proposed by any initiative proposal"* (Id. at 989, emph added). "Although an initiative petition under the present constitution may amend multiple sections of the constitution as long as the proposal contains a single subject, an initiative proposal *should identify the articles or sections of the constitution substantially affected.* This is necessary for the public to be able to comprehend the contemplated changes in the constitution . . . ." 448 So.2d at 989 (emph. added).

Fine summarized, "There is no question but that this proposal addresses at least three subjects which affect separate,

distinct functions of the existing governmental structure of Florida, and substantially affects multiple sections and articles of our present constitution which are not in any way identified to the electorate." 448 So.2d at 990. The "multiple sections and articles" referred to by the Court are summarized below. [4]

Justice Shaw, concurring only in the result of Fine, joined in departing from Floridians lenience and in declaring that "whether [the initiative] conflicts with existing provisions of the constitution is highly pertinent to the questions of whether it encompasses only one subject and whether its meaning is clear to the citizenry." At 998. He objected, however, to "the introduction of the function of government test," which he said would have invalidated "the ethics in government amendment which we upheld in Weber" [5] - "assuming, as I believe we can, that ethics in government is applicable to all branches and functions of government." 448 So.2d at 999. (However, if Weber's proposal is viewed as impacting "the ethics [*of people*] in government" wherever they serve, rather than the organic functions of the various branches they serve, Fine and Weber

---

[4] The Court referred to (1) Articles VII, IX and XII authorizing "taxation utilized for general governmental operations," at 991, (2) electrical, gas, water, sewer, transportation and garbage utilities and "user-fee services" which as "a matter of public record" are provided for revenue by various governments ("two separate and distinct functional operations of our government"), at 991, and (3) the Article VII provisions for capital improvement through revenue bonds, which the initiative "alters substantially" by requiring voter approval for projects costing above the proposal's limit.

[5] Weber v. Smathers, 338 So.2d 819 (Fla. 1976).

appear to be entirely consistent. Indeed, Floridians had said, 363 So.2d at 340, that Weber's initiative "encompassed several classes *of people*" in eight categories of public service.)

Justice Grimes, speaking for the Justices in validating "LIMITED POLITICAL TERMS," Advisory Op. to the Attorney Gen. - Limited Political Terms in Certain Elective Offices, 592 So.2d 225 (Fla. 1991), emphasized the consistency of that decision with Weber's "Ethics in Government" decision. Justice Grimes wrote that "although the proposed amendment affects *officeholders* in three different branches of government" - that is to say, the terms served by *individuals* in all sorts of offices - "that fact alone is not sufficient to invalidate the proposed amendment." [6]

Soon after Fine the Court invalidated the initiative entitled "CITIZEN'S RIGHTS IN CIVIL ACTIONS," which because it "changes more than one government function, . . . is clearly multi-subject." Evans v. Firestone, 457 So.2d 1351, 1354 (Fla. 1984). The proposal was (a) to limit noneconomic damages in civil actions to $100,000, (b) give constitutional status to summary judgments, and (c) limit any defendant's liability to damages apportioned to degree of his own fault. Following Fine's "function of government" test, the Court held, at 1354:

---

[6] Justice Grimes also wrote in Limited Political Terms that the Court had "found proposed amendments to meet the single-subject requirement even though they affected multiple branches of government." But as Justice Grimes himself suggested, Weber and Limited Terms are reconciled with Fine and later decisions by viewing them not as affecting the organic functions of different branches but as affecting *all the people indiscriminately* who serve in those branches.

> In Fine, we found multiplicity of subject matter because the proposed amendment would have affected several *legislative* functions. The proposed amendment now before us affects the function of the legislature and the judicial branches of government. Provisions a and c of the amendment, which limit a defendant's liability, are substantive in nature and therefore perform an essentially legislative function.

The Evans Court here employed a significant new verb - provisions a and c of the initiative "*perform* an essentially legislative function" - and treated the term as interchangeable with "affects" or "changes" in the single-subject test that Fine had used under the different circumstances of that case. Evans reiterated that the tort reform proposal "*performs* the functions of different branches," 457 So.2d at 1354 (latter emph. added):

> On the other hand, provision b, elevating the summary judgment rule . . . is procedural and embodies a function of the judiciary. We recognize that *all* power for each branch of government comes from the people and that the citizens of the state have retained the right to broaden or to restrict that power by initiative amendment. But where such an initiative ***performs the functions of different branches of government, it clearly fails the functional test for the single-subject limitation the people have incorporated into article XI, section 3, Florida Constitution.***

The Evans Court found also that the ballot summary was misleading and fatally deficient. Justice Shaw concurred on that ground alone and, citing his observations in Fine, expressed the view that the Evans tort reform proposal satisfied the single-subject rule. 457 So.2d at 1360. Justice Overton's Evans concurrence insisted that the decisions in Weber, Floridians, Fine and Evans all were "totally consistent in their application

of the single-subject requirements" - sustaining initiatives to impose uniform ethical standards on people employed in government, whatever branch or function employed them, and to approve casino gambling and allocate its tax revenue to certain purposes; and by the same standard invalidating initiatives which "substantially affected at least three distinct functions of government" (Fine), or "two distinct functions of government" (Evans). 457 So.2d at 1357.

Two years later, Carroll v. Firestone, 497 So.2d 1204 (Fla. 1986) found the "EDUCATION LOTTERY" proposal to be indistinguishable from the lottery initiative upheld by Floridians, and so upheld the education lottery. The Justices found, despite the initiative's suggestive title, that the proposal's designation of lottery profits for the "Education Trust Fund" was only a tentative allocation, and that the legislature's constitutional power over appropriations was unimpaired. That factor was decisive to Justice Ehrlich who, joined by Justice McDonald, concurred in Carroll's result only: "In my view," Justice Ehrlich wrote, "the [single-subject] infirmity in *Floridians*," which Justice Ehrlich had critiqued later in his separate Fine opinion, 448 So.2d at 995-96, "was that the revenue generated by casino gambling would be *inextricably linked* to funding education and law enforcement." 497 So.2d 1208 (emph. added).

Justice McDonald's recent opinion for the Justices in In Re: Advisory Opinion to the Attorney General - Restricts Laws

Related to Discrimination, So.2d , 19 Fla. L. Weekly S109, 110 (Fla. 1994), again endorses the Fine v. Firestone discipline and newly exemplifies its rigor (emphasis added):

> In support of the validity of the proposed amendment, the American Family Political Committee argues that discrimination is the sole subject of the proposed amendment. This Court has emphasized, however, that "enfolding disparate subjects within the cloak of a broad generality does not satisfy the single-subject requirement. *Evans v. Firestone*, 457 So.2d 1351, 1353 (Fla. 1984). In *Fine*, we disapproved a proposed amendment that characterized the provisions as affecting the single subject of revenues because it actually affected the government's ability to tax, government user-fee operations, and funding of capital improvements through revenue bonds. ***Similarly, we find that the subject of discrimination in the proposed amendment is an expansive generality that encompasses both civil rights and the power of all state and local governmental bodies. By including the language "any other governmental entity," the proposed amendment encroaches on municipal home rule powers and on the rulemaking authority of executive agencies and the judiciary.***

We now apply these settled principles to the "FULL TEXT OF PROPOSED AMENDMENT" in the "Save Our Everglades" initiative.

2. By the function-of-government analysis of *Fine v. Firestone* (1984), the "Save Our Everglades" proposal would invade and perform both the tax and appropriations functions of the Art. III Legislative Branch and its general lawmaking as well; it would significantly modify the structure of the constituted Art. IV Executive Branch and displace its functions in a discrete geographic area; it would perform functions of the Art. V Judiciary; and it would merge all those powers in a single body without annotating its departure from the separated-powers norm of Art. II, Sec. 3.

"Save Our Everglades" has clear deficiencies in terms of the functions-of-government analysis of Fine v. Firestone. By

performing functions that the existing Constitution commits to two or more branches, the initiative diminishes and changes the committed functions of those branches. And it does so without calling attention to its multifarious changes in Articles III, IV and V, and its diminution of the separated-powers norm of Article II, Section 3. Thus:

•• "SAVE OUR EVERGLADES" impacts and diminishes the ***legislative function*** ordained by Article III by (1) taxing a distinct segment of Florida's citizenry, (2) making a legislatively untouchable appropriation of public revenues to a stated purpose, [7] and (3) delegating to the Trustees (without the specificity constitutionally required in conventional legislative delegations) the power to prescribe regulations, ordain public works, and spend from the public purse. By comparison, even the Game and Fresh Water Fish Commission - the product of a ***legislative*** initiative [8] and until now unique among

---

[7] If this initiative performed only these two legislative functions, (1) taxing a selected class of Florida citizens and (2) appropriating the revenues to a favored public project, it would fail the Fine test as interpreted by Justices Ehrlich and McDonald in Carroll, *supra*. We urge the entire Court to embrace that reading of Fine in the context of initiatives that would both tax and spend. There can be no graver threat to constituted government than well-funded political action groups manipulating state election processes to impose new taxes on unpopular citizens in order to fund new appropriations fixed by the same initiative.

[8] The proposal to create the Game and Fish Commission was initiated by Joint Resolution of the Florida Legislature, so was not constrained by the single-subject rule. Its legislative origin afforded that proposition the full winnowing process that the Court described in Fine. Indeed, the Court confirmed precisely that in Sylvester v. Tindall, 154 Fla. 663, 18 So.2d 892, 898 (1944):

(continued...)

agencies in its autonomy - is closely circumscribed. [9] The Game and Fish Commission, for example, enjoys no dedicated source of revenue and no power to spend without a legislative appropriation. Art. IV, Sec. 9. [10] No notice is given in "SAVE OUR EVERGLADES" to advise the public of impacting these

---

[8](...continued)

> We may take judicial cognizance of the historical background of this amendment - the many years in which the legislature had tried in vain to adequately deal with the subject matter of this amendment by local or special acts . . . , and the conviction finally arrived at by the legislature and the people that this matter of game and fish conservation and regulation was a statewide problem and one that could only be properly solved by a long range program to be carried into effect by a State Commission - a new administrative department of the State Government - equipped with powers adequate to the purpose for which it was to be, and was, created.

[9] The Fish and Game Commission is empowered to exercise "the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life," with the notable exceptions that license fees must be fixed and penalties set by legislation. Art. IV, Sec. 9. This delegation of a small segment of the legislative power, specifically defined, is not unlike conventional delegating legislation. See Sylvester v. Tindall, 154 Fla. 663, 18 So.2d 892, 900 (1944). The Trustees' power extends this far: "to recreate the historical ecological functions of the Everglades Ecosystem by restoring water quality, quantity, timing and distribution (including pollution clean up and control, exotic species removal and control, land acquisition, restoration and management, construction and operation of water storage and delivery systems, research and monitoring).

[10] The Fish and Game Commission is dependent for operating revenue on license fees prescribed by "specific statute," and the legislature retains control of their appropriation "for the purpose of management, protection and conservation of wild animal life and fresh water aquatic life." Art. IV, Sec. 9. The "Everglades" Trustees, on the other hand, are to be funded by dedicated trust funds, "all of which funds shall be appropriated by the Legislature to the Trustees to be expended solely for the purpose of the Trust."

legislative functions or to specify the sections of Article III from which powers would be transferred to the Everglades Trustees. Fine condemns this measure absolutely. [11]

•• This initiative impacts the *executive power* ordained by Article IV by allocating regulatory power to a new body outside the "not more than twenty-five departments" authorized by Art. IV, Sec. 6, which are subjected to "direct supervision" of one or more of the constitutional officers. Again, no notice is given of this initiative's changing and affecting the Executive Branch article by expanding the scope of exceptional language in Sec. 6, "exclusive of those specifically provided for or authorized in this constitution," and "unless otherwise provided in this constitution." Unlike other agencies of the executive branch, the Trustees would not be confined in their spending to the executive branch budget (or the legislature's appropriations). The amendment text offers no meaningful constraint upon this remarkable concentration of executive power in a single agency.

---

[11] Fine incorporated into the single-subject test a standard of ***full and fair communication to the elector***:

• "only one subject and matters directly connected therewith, and that includes an understanding by the electorate of the specific changes in the existing constitution proposed by any initiative proposal." Fine, 448 So.2d at 989.

• "an initiative proposal should identify the articles or sections of the constitution substantially affected." At 989.

• "substantially affects multiple sections and articles of our present constitution which are not in any way identified to the electorate." At 990.

•• "SAVE OUR EVERGLADES" is unprecedented in its performance of the judicial or quasi-judicial function of adjudicating causative blame for "Everglades pollution," the terminology of common law nuisance, and assigning that blame to a specific class of citizens, "the sugarcane industry." It is typically the Article V judiciary, or others exercising quasi-judicial powers, who by Due Process of Law find such facts and assess such legal blame according to common law or statutory norms. *See* Advisory Opinion to the Governor, 196 So.2d 737, 739 (Fla. 1967). [12] At this very moment, an executive branch agency is exercising quasi-judicial power under the existing Constitution to assess the responsibility of "the sugarcane industry," and of EAA vegetable farmers as well, for water quality complaints in the Everglades. Thus the Division of Administrative Hearings, Department of Administration, preparing to try such issues with the mandate of Sec. 373.4592, Fla. Stat. (1983). [13] The "Save Our Everglades" initiative, asking for

---

[12] Even if the legislature uttered such a finding, it might be argued that "the sugarcane industry" had been accorded Due Process by "the legislative process" to which the Court alluded in Fine as a "filtering legislative process" featuring "legislative debate and public hearing." 448 So.2d at 988-89. Rotunda and Nowak claim that "When the legislature passes a law which affects a general class of persons, those persons have all received procedural due process - the legislative process." R. Rotunda and J. Nowak, 2 TREATISE ON CONSTITUTIONAL LAW § 17.8 at 646 (2d ed.).

[13] The DOAH proceeding subjects the South Florida Water Management District's SWIM Plan for "the Everglades" (the Surface Water Improvement and Management Plan adopted March 13, 1992) to the discipline of Chapter 120. The case is styled Sugar Cane Growers Cooperative of Florida, Inc., et al. v. South Florida Water Management Dist., Nos. 92-3038, 3039 and 3040.

factfinding by plebescite, would perform the committed functions of and thus diminish both the Article V judiciary and the authorized quasi-judicial functions of the Article IV executive.

The "Save Our Everglades" initiative fails the Fine v. Firestone functions-of-government test, and must on that account be excluded from the ballot.

B. "Save Our Everglades" is a classic case of logrolling, as it combines distinct and independent subjects in order to attract a collective favorable vote from those having differing opinions on the separate subjects.

The proposal before the Court is designed to achieve several major changes in the structure and functions of government, which the voters would not otherwise approve, by combining them with the separate subject of resolving water issues in the Everglades. Thus:

•• A government-sponsored ballot that fixes blame for Everglades water problems on a specified and limited class of citizens is of course intended to attract voters who otherwise would be loath to approve the creation of such a powerful governmental body, those who would leaving the tax power in the elected Legislature, those who would leave the executive power in the constituted Executive Branch, and those who would leave such adjudications to the constituted Judicial Branch or to quasi-judicial functions of the Executive Branch.

•• Berating a politically-targeted industry on a fashionable issue will attract any voter who is all too pleased to tax someone else to buy desired public works,

see supra fn. 7, even though that voter may otherwise oppose the creation of new governmental agencies and oppose new taxes on themselves. Even those electors who value the constituted structure and balance in Florida's government will be sorely tempted by this forced choice between preserving that government and "preserving the Everglades."

•• This measure even logrolls Florida Bay and Florida Keys Coral Reef into "the Everglades," a factual premise with which the legislature disagrees, [14] in order to attract local voters, concerned for the distinct problems of Florida Bay and Florida Keys Coral Reef, to the cause of taxing sugar cane farmers who are far distant both causally and geographically from Florida Bay and Florida Keys Coral Reef. It is most ironic that the author of this initiative actually *contradicted*, in official proceedings of the Florida Senate, the assertion in "SAVE OUR EVERGLADES" that the EAA cane farmers have polluted Florida Bay. Mr. Barley, identified in the letters of both the Secretary of State and the Attorney General as principal of the corporate sponsor, declared to the Senate Natural Resources Committee on January 26, 1994, that "I don't think there is any evidence that phosphorus from the sugar farms is reaching Florida Bay." *See* Appendix B to this Brief, p. 7. The logrolling effect of including Florida Bay in "the Everglades Ecosystem" is obvious: it appeals to Florida Bay enthusiasts to

---

[14] Florida Bay and Florida Keys Coral Reef are excluded from the "Everglades Protection Area" described by § 373.4592 (2)(c), Fla. Stat., the Everglades Protection Act of 1991.

look far to the north for scapegoats who can be made to pay for Florida Bay's remedies.

This parsing of the separate and distinct subjects in the proposal at hand could be extended indefinitely. Suffice to say that the proposal manifestly offends the anti-logrolling purposes of the single-subject rule as described by Fine v. Firestone, 448 So.2d at 993:

> The purpose of the single-subject requirement is to allow the citizens to vote on singular changes in our government that are identified in the proposal and to avoid voters having to accept part of a proposal which they oppose in order to obtain a change which they support.

Just last year the Justices exemplified this anti-logrolling principle in Advisory Op. to the Attorney Gen. - Limited Marine Net Fishing, 620 So.2d 997 (Fla. 1993). That decision sustained the LIMITED NET FISHING initiative against a single-subject challenge. The principal significance of Limited Net Fishing is in the language chosen from Limited Political Terms for quotation in the Per Curiam opinion. The single-subject test was described as requiring "a 'natural relation and connection as component parts or aspects of a single dominant plan or scheme,'" and as disqualifying any which contains "two unrelated provisions, one which electors might wish to support and one which they might disfavor." 620 So.2d at 999.

The Limited Net Fishing opinion also recited several elements of that initiative which might properly be described as ***subsidiary subjects*** having a natural relation to the single dominant plan of limiting net fishing: "The remaining provisions,

which provide definitions, exemptions, penalties, a severability clause, and an effective date, are logically related to the subject of the amendment." 620 So.2d at 999.

Justice Kogan articulated in his concurrence to Limited Political Terms that potential elector disagreement with "integral" subsidiary elements of a unified proposal is not the kind of potential reaction that will invalidate the measure for logrolling. The putative "separate" subjects must be "at least two complete and workable proposals," either of which if severed from the other does not render the other "absurd." 592 So.2d at

"Save Our Everglades" fails Justice Kogan's anti-logrolling test, because (1) first it raises, then (2) it appropriates a dedicated fund of public money to "recreate the historical ecological functions of the Everglades Ecosystem," et cetera; (3) it creates a new body unmatched in autonomy among Florida governments to appropriate from the fund and exercise legislative powers to the ends generally described; (4) by artificial definition of the "Everglades Ecosystem" it explicitly enlarges the historical Everglades system, now defined by law, to include "Florida Bay and the Florida Keys Coral Reef"; and (5) it makes a purported finding of fact and policy that "the sugarcane industry . . . polluted the Everglades."

Each of these subjects can stand alone as a distinct act of legislative, executive or judicial judgment, and severing any one of them would not "render[] the remainder absurd," as Justice Kogan said would occur in the case of a truly integrated single

subject. Or, to state the case in terms that Justice Shaw has employed, the five subjects we have isolated lack such "logical and natural unity of purpose" that a vote for or against the whole "is an unequivocal expression of approval or disapproval of the entire initiative." Shaw, J., concurring specially in Fine, 448 So.2d at 998.

The "Save Our Everglades" proposal is the very prototype of prohibited logrolling under any standard that the Justices have found correct and useful in recent years.

II. The ballot title and the "substance" summary intended to be the ballot proxy for the amendment text is rank with politicking which the State cannot lawfully sponsor on its ballot.

The ballot title is "SAVE OUR EVERGLADES" and the intended substance summary for the ballot is (emph. added):

> "Creates the Save Our Everglades Trust to restore the Everglades for future generations. Directs **the sugarcane industry**, which **polluted the Everglades**, to help pay to clean up pollution and restore clean water supply. Funds the Trust for twenty-five years with a fee on raw sugar from sugarcane grown in the Everglades Ecosystem of one cent per pound, indexed for inflation. Florida citizen trustees will control the Trust."

For the record, "the sugarcane industry" emphatically denies that it has "polluted the Everglades."

The Secretary of State is not empowered to sponsor and trumpet Mr. Barley's political passions in the text of official documents employed in a constitutional referendum. Both the ballot title and the summary offend the fairness and neutrality standards that this Court has found embodied in Sec. 101.161.

This Court has never countenanced ballot titles and summaries politicking issues as if they were "paid political advertisement[s]." In Carroll v. Firestone, 497 So.2d 1204, 1206-07 (Fla. 1986), the Court upheld the EDUCATION LOTTERIES initiative despite external politicking which encouraged the implication suggested by the title, which was corrected by the summary, [15] that the "Education Lotteries Trust Fund" was *ipso facto* appropriated for "education." The Carroll Court simply refused to consider external politicking as giving prohibited meaning to a ballot title and summary that were found acceptable in themselves. But here the ballot itself is that "paid political advertisement": it cries out "SAVE OUR EVERGLADES" and declares, "the sugarcane industry . . . polluted the Everglades."

Evans v. Firestone, 457 So.2d 1351 (Fla. 1984), invalidated the CITIZEN'S RIGHTS initiative for its misleading ballot summary as well as for its single-subject violation. Under the standard that "the ballot be fair and advise the voter sufficiently to enable him intelligently to cast his ballot," Evans found the summary "clearly inaccurate" in suggesting that the proposal "establishes" summary judgment procedures which

---

[15] At 1206: "The summary makes clear that the amendment authorizes state lotteries and that the revenues from such lotteries, subject to legislative override, will go to the State Education Lotteries Trust Fund. That is the chief purpose of the amendment and is all that the statute requires. It is true . . . that the legislature may choose . . . even to divert the proceeds to other uses. However, those questions go to the wisdom of adopting the amendment and it is for the proponents and opponents to make the case for adopting or rejecting the amendment in the public forum."

already exist in the courts, and for recasting terms of limitation in the text ("shall not be awarded in excess of $100,000") into "language of affirmation in the ballot summary" ("establishes" full recovery for economic damages). The Court also disapproved the "editorial comment" in the summary, "thus avoiding unnecessary costs" - which the Court said lacked a logical explanation of how a constitutional provision would save more costs than the existing rule of court. At 1355. Finally, the Court added its disapproval of "subjective evaluation of special impact" in the ballot summary, at 1355 (emph. added):

> Moreover, the ballot summary is no place for subjective evaluation of special impact. The ballot summary should tell the voter the legal effect of the amendment, and no more. ***The political motivation behind a given change must be propounded outside the voting booth.***

People Against Tax Revenue Mismanagement, Inc. v. County of Leon, 583 So.2d 1373 (Fla. 1991) involved a countywide referendum on a $60 million Leon County bond issue, which was also subject to the "explanatory statement" requirement of § 101.161(1). The Court through Justice Kogan made clear that a politicking summary on the government-sponsored ballot is impermissible. Speaking of the slogan "TAKE CHARGE . . . IT'S YOUR FUTURE," published on the ballot, and of the ballot summary which asked whether taxes should be raised for "critical" capital expenditures as described, the Court stated at 1376:

> We agree that the use of the campaign slogan and the word "critical" reflect a slight lack of neutrality that should not be encouraged in ballot language. Government should never appear

> to be "shading" a ballot summary to favor one position or another.

Viewing the whole in context, however, the Court found the defect not fatal. The Court's reasoning is most pertinent to the "SAVE OUR EVERGLADES" initiative. At 1376:

> The campaign slogan appearing on the ballot does no more than urge voters to "take charge . . . it's your future." Some voters might "take charge" by voting yes, others easily might "take charge by voting no. Thus, this particular language lacks neutrality only implicitly, because it was the campaign slogan of persons favoring the tax. Moreover, identifying capital projects as "critical" in no sense renders this ballot so confusing or imprecise as to be clearly and conclusively defective. It is not reasonable to conclude that the voters of Leon County were so easily beguiled by a few arguably non-neutral words, when the remainder of the ballot plainly stated that a "yes" vote meant new taxes would be imposed.

The "Save Our Everglades" politicking in the ballot summary cannot be legitimized by such reasoned explanations. "[T]he sugarcane industry . . . polluted the Everglades" is little more than a purposeful incitement of voter wrath.

Summarizing the title and ballot summary defects in "SAVE OUR EVERGLADES":

- "SAVE OUR EVERGLADES" is a blatantly political advertisement, advanced as a ballot title. It cannot be rationalized as innocuous or as having two meanings as was the case in People Against Tax Revenue Mismanagement.
- The summary's accusation that "the sugarcane industry . . . polluted the Everglades," like the larger accusation in subs. (a) of the text ("damaging the

Everglades with pollution and by altering water supply"), aside from being false in fact and a displacement of judicial and quasi-judicial functions, is like the exhortation "SAVE OUR EVERGLADES" objectionable politicking in the State's ballot.

•• The summary is misleading and materially incomplete both in what it *does* say and in what it *doesn't* say. Nothing in the text of the amendment purports to "help[] assure . . . a healthy economy for future generations." "The Everglades" referred to in the summary as the object of sugar cane pollution is no doubt "the historical Everglades" as referred to in subs. (d) of proposed § 16. The summary advances the fiction, conceded to be such by the sponsor, that water quality problems affecting "the Everglades" are functionally associated with "Florida Bay and the Florida Keys Coral Reef," as posed by subs. (d) of § 16.

Conclusion.

The "SAVE OUR EVERGLADES" initiative should be excluded from the referendum ballot.

Respectfully submitted,

Robert P. Smith
Florida Bar No. 75630
Hopping Boyd Green & Sams
123 South Calhoun Street (32301)
Post Office Box 6526
Tallahassee, Florida 32314
(904) 222-7500

Attorney for Sugar Cane Growers Cooperative of Florida, Inc.

Certificate of Service

I DO CERTIFY that a copy hereof was furnished by mail this March 31, 1994, to Hon. Robert A. Butterworth, Attorney General, State of Florida, The Capitol, Tallahassee, Florida 32399.

Robert J. Sweetz

Attorney

APPENDIX A

Secretary of State's "format approval" letter to the sponsor, September 29, 1993, with attached copy of petition form containing ballot title, ballot summary, and full text of Proposed Amendment.

FLORIDA DEPARTMENT OF STATE
Jim Smith
Secretary of State
DIVISION OF ELECTIONS
Room 1801, The Capitol, Tallahassee, Florida 32399-0250
(904) 488-7690

September 29, 1993

Mr. George Barley, Chairman
Save Our Everglades Political
Action Committee
1919 Espanola Drive
Orlando, Florida 32804

Dear Mr. Barley:

Re: Save Our Everglades

This office is in receipt of the petition form, ballot title and ballot summary for the proposed initiative amendment, Save Our Everglades.

The Division of Elections approves the format which you submitted for the above-referenced initiative and a copy is attached for your files.

No review of the legal sufficiency of the text of the proposed amendment has been, nor will it be undertaken by the Division of Elections.

Please let this office know if it can assist you further.

Sincerely,
Ethel Baxter
for
Dorothy W. Joyce
Division Director

DWJ/EB/pr

Enclosure

cc: Supervisors of Elections
with copy of petition

CONSTITUTIONAL AMENDMENT PETITION FORM

SAVE OUR EVERGLADES

TITLE: SAVE OUR EVERGLADES

SUMMARY:

Creates the Save Our Everglades Trust to restore the Everglades for future generations. Directs the sugarcane industry, which polluted the Everglades, to help pay to clean up pollution and restore clean water supply. Funds the Trust for twenty-five years with a fee on raw sugar from sugarcane grown in the Everglades Ecosystem of one cent per pound, indexed for inflation. Florida citizen trustees will control the Trust.

I am a registered voter of Florida and hereby petition the Secretary of State to place the following amendment to the Florida Constitution on the ballot in the general election.

Name _____

(Please print information as it appears on voter records)

Street Address _____

City _____ Zip _____

Precinct _____ Congressional District _____

County _____ Date Signed _____

[X] _____

Sign as Registered

FULL TEXT OF PROPOSED AMENDMENT:

(a) The people of Florida believe that protecting the Everglades Ecosystem helps assure clean water and a healthy economy for future generations. The sugarcane industry in the Everglades Ecosystem has profited while damaging the Everglades with pollution and by altering water supply. Therefore, the sugarcane industry should help pay to clean up the pollution and to restore clean water. To that end, the people hereby establish a Trust, controlled by Florida citizens, dedicated to restoring the Everglades Ecosystem, and funded initially by a fee on raw sugar from sugarcane grown in the Everglades Ecosystem.

(b) Article X, Florida Constitution, is hereby amended to add the following:

"Section 16. Save Our Everglades Trust Fund.

"(a) There is established the Save Our Everglades Trust Fund (Trust). The sole purpose of the Trust is to expend funds to recreate the historical ecological functions of the Everglades Ecosystem by restoring water quality, quantity, timing and distribution (including pollution clean up and control, exotic species removal and control, land acquisition, restoration and management, construction and operation of water storage and delivery systems, research and monitoring).

"(b) The Trust shall be administered by five Trustees. Trustees shall be appointed by the governor, subject to confirmation by the Senate, within thirty days of a vacancy. Trustees' appointments shall be for five years; *provided that* the terms of the first Trustees appointed may be less than five years so that each Trustee's term will end during a different year. Trustees shall be residents of Florida with experience in environmental protection, but Trustees shall not hold elected governmental office during service as a Trustee. Trustees may adopt their own operating rules and regulations, subject to generally-applicable law. Disputes arising under this Section shall be first brought to a hearing before the Trustees, and thereafter according to generally-applicable law. Trustees shall serve without compensation but may be reimbursed for expenses.

"(c) The Trust shall be funded by revenues which shall be collected by the State and deposited into the Trust, all of which funds shall be appropriated by the Legislature to the Trustees to be expended solely for the purpose of the Trust. Revenues collected by the State shall come from a fee on raw sugar from sugarcane grown within the Everglades Ecosystem. The fee shall be assessed against each first processor of sugarcane at a rate of $.01 per pound of raw sugar, increased annually by any inflation measured by the Consumer Price Index for all urban consumers (U.S. City Average, All Items), or successor reports of the United States Department of Labor, Bureau of Labor Statistics or its successor, and shall expire twenty-five years after the effective date of this Section.

"(d) For purposes of this Section, the Everglades Ecosystem is defined as Lake Okeechobee, the historical Everglades watershed west, south and east of Lake Okeechobee, Florida Bay and the Florida Keys Coral Reef, *provided that* the Trustees may refine this definition.

"(e) Implementing legislation is not required for this Section, but nothing shall prohibit the establishment by law or otherwise of other measures designed to protect or restore the Everglades. If any portion of this Section is held invalid for any reason, the remaining portion of this Section shall be severed from the void portion and given the fullest possible force and application. This Section shall take effect on the day after approval by the electors."

104.185 — It is unlawful for any person to knowingly sign a petition or petitions for a particular issue or candidate more than one time. Any person violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor of the first degree, punishable as provided in s.775.082, s.775.083,s775.084.

MAIL COMPLETED PETITION FORMS TO:

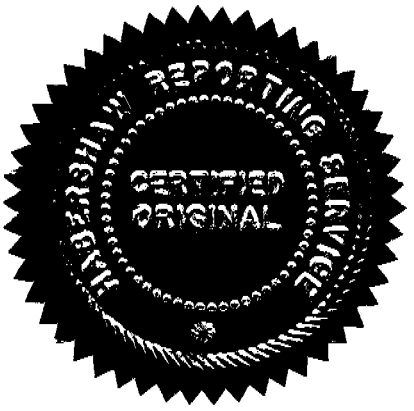
Paid Political Advertisement: SAVE OUR EVERGLADES COMMITTEE _____

APPENDIX B

Transcript of proceedings January 26, 1994, Senate Natural Resources Committee.

STATE OF FLORIDA

DEPARTMENT OF NATURAL RESOURCES



IN RE:)
)
SENATE NATURAL RESOURCES)
COMMITTEE MEETING.)
)

BEFORE: SENATE NATURAL RESOURCES COMMITTEE

DATE: WEDNESDAY, JANUARY 26, 1994

TIME:

LOCATION:

REPORTED BY: SUE HABERSHAW JOHNSON
CERTIFIED COURT REPORTER
REGISTERED PROFESSIONAL REPORTER
NOTARY PUBLIC

PLEASE NOTE: THE REPORTER WAS NOT PRESENT AT THE PROCEEDING. THE TRANSCRIPT WAS PREPARED BY LISTENING TO CASSETTES AND IS ACCURATE ONLY TO THE EXTENT THE CASSETTES WERE AUDIBLE TO THE REPORTER.

(WHEREUPON, THE MEETING WAS IN PROCESS AND THE FOLLOWING EXCERPT WAS TRANSCRIBED.)

MR. GEORGE BARLEY: Yes. Thank you very much. I'm appearing here as Chairman of the Florida Keys National Marine Sanctuary Advisory Council. Let me tell you one thing. I drew a little graph for you. That graph is a representation of the conditions of the Everglades. The Everglades is dying, and I'm going to show the results of it in Florida Bay.

One hundred thousand acres of sea grass has died. Algae blooms upwards of 650 square miles are now constant. At the bottom of the screen is A algae line. This is out in the Atlantic Ocean looking towards Long Key State Park. You can see it a little better there. This was filmed on December the 16th. This algae is there now year round. It moves around to your right and to the upper part you can see the algae. Those are coral reefs. Algae is on them. There's the algae line again, Seven-Mile bridge, moving down to Key West. The algae's on your left. This is pouring through the Seven-Mile bridge. You can see a band of algae coming through the spans, and as the helicopter goes around you can see how big it is. It goes on for miles. That's a little better contrast now.

There's a real good picture of what's happening in the Everglades. And don't think that this is just happening south of Tamiami Trail. Every scientist in the equation will testify to you that you are not going to fix Florida Bay until you restore the Everglades. Look at that line. This is, ladies and gentlemen, not Florida Bay, this is the Atlantic Ocean. This is the only living coral reef system in North America.

Now the only thing I disagree with in what Dexter Lehtinen told you, he said just the Miccosukee Indians live in the Everglades. This happens to be the Everglades. This is part of the Everglades' ecosystem. These are homes on the bay side in Marathon, and what these people have in their back yard is a cesspool of algae.

And I don't care how many programs you announce. I don't care about Save Our Everglades program in 1983. I don't care about proclamations of victory, statements of principle, or what. Nobody has really done anything concrete to fix the Everglades. And if we don't do it, this is the heritage that we are leaving our children and it is not fair to them.

This is Everglades National Park. This is a tour boat taking people out to see the former wonders of

Florida Bay, and they're in the middle of hundreds of acres of algae. Now you need money to fix Florida Bay and you need money to fix the Everglades.

I was absolutely astounded to see two high state officials get up here, Mr. Thompson and Mr. MacVicars, and testify to you, inaccurately, that the sugar industry was paying their full share of the costs. That's what they said. That's what they said in their press release, the sugar industry was paying for the cost of cleaning up their pollution. That simply is not true.

Dr. Henry Fishkind, who's a very prominent economist, issued a report--the District has now acknowledged publicly that the cost of that project is far above $465 million dollars.

They happened to have left a lot of things out of that. They left the value of the public land they were throwing in. They left the value of an experimental STA that they've already built with taxpayer money. They left out operation and maintenance. That's a $700 million project by their own numbers. Now what didn't go up when they made those disclosures was sugar's contribution. Sugar never paid another nickel. The taxpayers paid that.

This is an industry that will receive over the

next 25 years in Florida various federal and state subsidies approaching $6.5 billion. You all know that. Everybody sitting on this Committee knows that this is the richest subsidized industry in the State of Florida. Over the last 20 years they've received billions of dollars in subsidized benefits, yet they don't want to pay to clean up their pollution. They do not want to pay to restore the Everglades. They want the taxpayers to pay.

And so, let me take off my Advisory Council hat and put on another hat. We don't think that the government is going to make the sugar industry pay to clean up their pollution. We don't think the government is going to make the sugar industry pay, as we must all pay, to restore the Everglades. And so we must have a fair mechanism, not a punitive one, not an unfair mechanism, but a mechanism to require the sugar industry to contribute along with the taxpayers a fair share.

And so, a number of us across Florida--business people, homeowners, environmentalists, people of every kind, of every sort in Florida--have formed an organization called Save Our Everglades, and we're going to take this issue to the people of Florida, and we're going to let them vote. Do they want to pay to

clean up sugar's pollution? Do they want to pay to take care of sugar's responsibility to restore the Everglades? And our initiative provides for a processing fee, very similar to what the Legislature did with the phosphate industry years ago, of a penny a pound on all sugar that is produced in the Everglades ecosystem.

Now these numbers are very simple. The world price of sugar is about nine cents. What they get, because of these subsidies, is 23 cents. We want them to pay a penny to fix the Everglades. It's fair, it doesn't put them out of business, it doesn't cost them jobs, and it creates an engine of restoration to which we must add others as well, taxpayers included and other agriculture and other urban interests.

SEN. DANTZLER: George, I've got a question. I'm not trying to cut you off. The pictures you showed us were dramatic photographs and this Committee, and I think every Floridian should be concerned about that.

We took a field trip down there. We saw the water change from clear water to the color of that board behind me, and you're absolutely right in that the hydroperiod issues--at least this is my conclusion--the hydroperiod component of all of this has everything to do with the health of Florida Bay.

But the question is, do the water quality problems of the EAA have anything to do with those pictures you showed us?

MR. BARLEY: Well, I don't think we know the answer to that. I don't think there is any evidence that phosphorus from the sugar farms is reaching Florida Bay. There are scientists that maintain that it is, but I don't know of any evidence that it is. But that's not why Florida Bay is, Florida Bay is not dying from an influx of pollutants. Florida Bay is dying because the Everglades ecosystem has been dried up. And the sugar industry would not be able to operate today if it did not generously use that water at a time when it wants to use it, not . . . you can't just say, "Well, yeah, we're dumping the water out. Let's put it back in the Everglades." You got to put it in slowly at the right time.

SEN. DANTZLER: I agree.

MR. BARLEY: And the sugar industry being there and the state giving them the benefits they have prevent that from happening.

SEN. DANTZLER: That's why I said at the very beginning in the meeting that whatever we do has to deal with the hydroperiod question and to me that's the bigger concern, not the only concern.

MR. BARLEY: Let me tell you what we're hearing in your district, where you live, because we've done a poll. The citizens of your district, the citizens of all your districts want you to require the polluter to pay and the user of the Everglades to pay to restore it. Not the taxpayers. Your neighbors don't want to pay to clean up their pollution. And they're paying a quarter of a billion dollars under this settlement, under the Flo-Sun agreement. You string that out, the taxpayers are paying a quarter of a billion dollars to clean up sugar's pollution.

SEN. DANTZLER: Okay. I understand that all we're doing is setting the stage for the big debate that we're going to have during the session. Question by Senator Williams.

SEN. WILLIAMS: Mr. Barley, I understood you to say that you do not believe that the sugar industry is polluting the Everglades with nutrients. Did I understand you to say that?

MR. BARLEY: No, I didn't say that. I said Florida Bay. They're definitely polluting, they're destroying three to four acres of wetlands a day in the Everglades ecosystem. They're definitely polluting the Everglades. The scientists have...

SEN. WILLIAMS: Do you think that is the sole

fault of the sugar industry?

MR. BARLEY: No, sir, I do not.

SEN. WILLIAMS: Well, you want to penalize just the sugar industry with your proposed tax?

MR. BARLEY: No, sir. That isn't what I said. I think all of us need to step forward to pay to fix the Everglades. But, I don't think the taxpayers should have to pay as they are under the Flo-Sun agreement to clean up Flo-Sun's pollution. And that's what's happening.

SEN. WILLIAMS: I personally believe that you're making an unfair accusation to the sugar industry, blaming them for all the problems down there when all of us know it's not all of their fault. And I think it is very unfair for you and your organization to do that.

MR. BARLEY: I don't say that, I don't say that it is all their fault, and we'll, I'm going to deliver to you a copy of Dr. Fishkind's study that demonstrates that your taxpayers in your district are paying half the cost of cleaning up Flo-Sun's pollution under this agreement. Now, Senator, do you think that's right, for your constituents back home to pay to clean up sugar's pollution?

SEN. WILLIAMS: No, but I'm not convinced that

it's all of sugar's fault that that's happening.

MR. BARLEY: I agree with you. The Everglades is not dying just because of the sugar industry. We've all let it die. We all need to pay a fair share to fix it.

SEN. DANTZLER: One comment by Senator Kirkpatrick and then we're going to move on.

SEN. KIRKPATRICK: I just, I have a real tough time now when we start injecting political polls into the format of our Committee process here. I mean, we're accused of making decisions already because we don't concentrate on anything but polls. And if you say do you want to pay a lot of increased taxes, or do you want those old polluters to pay, I mean, everybody's gonna say I don't want to pay no new taxes, make the polluters pay. There isn't any question. You ask the right question, you get the right answer.

What we need to concentrate on is the science on this thing and to separate these issues. We show a TV tape here of the Bay and that's one of the issues I want to concentrate on. He admitted that he doesn't believe that there is a lot of linkage as far as the pollution and the polluters and who pays in the Everglades Agricultural Area and Florida Bay. I'm

having trouble getting all of this rolled up into one big ball here and I've...

MR. BARLEY: . . .

SEN. DANTZLER: There's going to be plenty of time for that. You've...

MR. BARLEY: Let me tell you what the linkage is. The linkage I've just identified is a $250 billion subsidy to the sugar industry in this settlement. That happens to be exactly the amount of money we need to do stage one of Florida Bay, buy the frog pond, so forth and so on. We don't have the money to do that. We're getting ready to give that money to the sugar industry.

SEN. KIRKPATRICK: I've just got to say that what the scientists told us when we were in on-site. They told us, A, that pollution was not the cause of this thing. There was a couple of renegade scientists that said, but the consensus was that the pollution was not the cause, it was the lack of water and that engineeringly, engineering-wise, we could put the water in the Bay to restore the Bay.

What's happened is that the access to that water, the volume of water at the time we need it, has been cut off for political reasons, not for scientific reasons, and I want to get back to that particular

question of the issue.

SEN. DANTZLER: Thank you, George. We thank you for being here.

(WHEREUPON, THE MEETING CONTINUED IN SESSION.)

* * * * *

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
SS
COUNTY OF LEON)

I, SUE HABERSHAW JOHNSON, Certified Court Reporter, Registered Professional Reporter, and Notary Public in and for the State of Florida at Large:

DO HEREBY CERTIFY that the foregoing transcript was prepared from cassettes furnished by the Senate Natural Resources Committee; that I was not present nor responsible for the taping of the proceedings; that it was reduced to typewriting under my supervision; and the transcript is accurate only to the extent the cassettes were audible to me.

I FURTHER CERTIFY that I am not a relative, employee, attorney, or counsel of any of the parties, nor relative or employee of such attorney or counsel.

CERTIFIED THIS 25TH DAY OF FEBRUARY, A.D. 1994, IN THE CITY OF TALLAHASSEE, COUNTY OF LEON, STATE OF FLORIDA.

Sue Habershaw Johnson
SUE HABERSHAW JOHNSON

STATE OF FLORIDA)
COUNTY OF LEON)

The aforegoing was acknowledged before me this 25th day of February, A.D. 1994, BY SUE HABERSHAW JOHNSON.

Produced for 525-788-13-801-0

Karol M Schneider
KAROL M SCHNEIDER
Notary Public, State of Florida
My Commission Expires Dec. 21, 1994
Bonded Thru Troy Fain - Insurance Inc.