IN THE SUPREME COURT
STATE OF FLORIDA

In Re: Advisory Opinion to the Attorney General-- Save Our Everglades Trust Fund	)	Case No. 83,301

INITIAL BRIEF OF RESPONDENT
FLORIDA CHAMBER OF COMMERCE

Original Proceeding
Pursuant to Article V, Section 3(b)(10),
Florida Constitution

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STATEMENT OF CASE AND FACTS

The Attorney General initiated this proceeding to test the constitutionality of a proposed constitutional amendment commenced through the initiative process of Article XI, Section 3, Florida Constitution, by a political group known as "Save Our Everglades Committee." The proposed constitutional amendment is titled Save Our Everglades (hereinafter referred to as "S.O.E."). In compliance with constitutional and statutory procedural requirements,[1] the Attorney General asked the Court to consider whether the proposed constitutional amendment meets the requirements of law for placement on a ballot to be submitted to the voters of Florida.[2]

On March 11, 1994, the Court entered an Order authorizing interested parties[3] to file briefs on or before March 31, and setting oral argument for May 2, 1994. Respondent, the Florida Chamber of Commerce (the "Florida Chamber" hereafter), a not-for-profit statewide business association representing over 15,000 businesses, many of whom would be affected by this matter, duly filed a Notice of Appearance, declaring its interest in the proceeding in opposition to the proposed amendment. The S.O.E.

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[1] See Fla. Const. Art. IV, § 10, Art. XI, § 3; § 16.061(1), Fla. Stat. (1993).

[2] The Supreme Court has jurisdiction pursuant to Article V, Section 3(b)(10) of the Florida Constitution.

[3] Article IV, Section 10, Florida Constitution, specifies a rule of standing in these proceedings. Section 10 states that "the justices shall, subject to their rules of procedure, permit interested persons to be heard on the questions preserved and shall render their written opinion expeditiously."

amendment clearly attacks the sugar industry and inappropriately sends a message that any politically unpopular business is subject to attack by the initiative process. The Florida Chamber contends that the S.O.E. amendment is constitutionally and statutorily defective under Florida law, and the U.S. Constitution.

As contained in the circulated initiative petition, the proposed S.O.E. amendment, including an introduction or preamble, states:

> FULL TEXT OF PROPOSED AMENDMENT:
>
> (a) The people of Florida believe that protecting the Everglades Ecosystem helps secure 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.

SUMMARY OF ARGUMENT

The Florida Chamber contends that the S.O.E. amendment should be deemed by this Court to be "not in compliance" with Florida law, its Constitution and the U.S. Constitution. A substantial number of defects in the S.O.E. amendment result from the fact that the sponsors of the amendment focused on their political agenda and attempt to sway the electorate to their point of view rather than neutrally provide information of the "legal effect" of the amendment.

The title to the S.O.E. amendment, "Save Our Everglades," misleads the voters and violates the standards prescribed by Section 101.161, Florida Statutes. Sponsors of the S.O.E. amendment have employed a ballot title as a campaign tactic or selling device for the proposed amendment. Partisan coloring, catch phrases and political sloganeering have no place in providing the voters with "fair notice."

The S.O.E. ballot summary also violates Section 101.161, Florida Statutes. The S.O.E. amendment summary fails to provide "fair notice" in "clear and unambiguous language" of its substantial impacts on the Constitution or various governmental branches and their functions. It also does not guide the electorate to cast an intelligent and informed vote. Rather, the proposed amendment singles out the sugar industry from all other businesses and attempts to convince the public that this industry is an evil in the state of Florida and should be penalized with a tax on raw sugar for its contribution to the pollution of the Everglades. The

ballot is drafted in a thoroughly biased fashion to persuade voters in the voting booth, rather than merely inform them with neutral language as to the choices they will be asked to make in the privacy of the voting booth.

The S.O.E. preamble, labeled as part of the text in the Petition, is substantively defective in that is contains highly prejudicial, unproven factual assertions seeking to persuade the electorate. This is contrary to the conceptual requirements of Article XI, Section 3, and the initiative process requiring fairness and non-partisan rhetoric. Sanctioning of such language by the Court would in effect inappropriately add a perceived measure of truth to the unadjudicated factual assertions in the preamble.

The proposed S.O.E. amendment violates the one subject requirement of Article XI, Section 3, of the Florida Constitution, as it fails to give "fair notice" that it substantially affects numerous provisions of the Constitution, making "multiple, precipitous changes," thereby inappropriately impacting executive, legislative and judicial branches and their functions within the existing governmental structure. Equally important, the S.O.E. amendment alters the existing governmental structure in that it essentially creates a fourth branch or governmental entity with executive, legislative and quasi-judicial powers. By failing to adequately make these disclosures, the electorate is unable to comprehend S.O.E. amendment ramifications and cast an intelligent vote. This also requires the Court to engage in constitutional

construction previously denounced in order to save a conflict-ridden initiative petition.

Should this Court validate the proposed amendment in an advisory opinion, a substantial measure of perceived truth would be inappropriately added to the untested statements in the S.O.E. preamble. Consequently, the democratic process would be improperly distorted by the government bestowing an unfair advantage to the sponsors of the S.O.E. amendment. Thus, the proposed S.O.E. amendment violates the due process clause of the fourteenth amendment of the U.S. Constitution.

Although the proposed amendment contains a severability clause, severance of any portion of the "text" of the S.O.E. Amendment would be inappropriate. The presence of a severability clause does not compel severance. The advisory process under Article V, Section 3(b)(10), of the Florida Constitution, does not provide severance authority for an initiative petition. In all events, severing parts of the proposed amendment would defeat the expressed intent of its proponents and all present petition signatories, and would run counter to decisions which declare that the Court will not engage in guesswork and arbitrary decision-making.

Finally, the people have not reserved to themselves an absolute right to vote on any and all proposals to amend their constitution; rather, the people prescribed requirements and limitations as a prerequisite to submission of proposed amendments to the voters. It is the Court's responsibility and indeed, its

duty, to do the peoples' will in enforcing prescribed requirements and limitations on the initiative process.

For these reasons, the Florida Chamber respectfully submits that this Court's advisory opinion should be that the S.O.E. proposal does not comply with the laws of Florida and its Constitution, and is inconsistent with the U.S. Constitution.

ARGUMENT

I. THE PROPOSED AMENDMENT VIOLATES THE STANDARDS PRESCRIBED BY SECTION 101.161, FLORIDA STATUTES.

Section 101.161 establishes the procedure for placement of the proposal on the election ballot. Section 101.161 states, in relevant part:

> 1. Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure, shall be printed in clear and unambiguous language on the ballot after the list of candidates . . . the substance of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.
>
> 2. The substance and ballot title of a constitutional amendment proposed by initiative shall be prepared by the sponsor and approved by the Secretary of State in accordance with rules adopted pursuant to Section 120.54 . . . the Department of State shall furnish the designating number, the ballot title, and the substance of each amendment to the supervisor of elections of each county in which such amendment is to be voted on.

§ 101.161, Fla. Stat. (1993) (emphasis added).

In regard to Section 101.161, pertinent portions of Secretary of State administrative rules provide:

> Rule 1S-2.009 Initiative Constitutional Amendment Petition.
>
> (1) Any proposed amendment to the State Constitution to be placed on the ballot by initiative shall be submitted to the Division of Elections for approval as to format prior to the proposed amendment being circulated for signatures. Such submission shall be in writing and shall include a copy or a facsimile of the form proposed to be circulated. The Division shall review as to

> the sufficiency of the format only and render a decision within seven days following receipt. No review of the legal sufficiency of the text of the proposed amendment is to be undertaken by the Division.
>
> (2) Proposed initiative amendments shall be circulated for signatures only if the format of the petitions is deemed sufficient by the Division....

Fla. Admin. Code R. 1S-2.009 (emphasis added).

The essence of the above statute and rule contemplates and indeed requires that a proposed amendment be presented to this Court and be scrutinized for the first time as to its legal sufficiency. Hence, there has been no prior adjudication of factual assertions, nor has there been any scrutiny applied to the appropriateness of initiative procedures followed by sponsors of the amendment or that appropriate concepts of substantive Florida law have been adhered to.

In 1980, Section 101.161 was amended to require that the ballot title and summary be written in "clear and unambiguous language." The aim of this statutory change was to ensure voters "fair notice" of the proposal's true purpose and effect, or "chief purpose." Grose v. Firestone, 422 So. 2d 303, 305 (Fla. 1982); Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982). Several opinions of this Court have applied Section 101.161 in Article XI, Section 3, initiative proceedings. These opinions have developed certain standards which must be adhered to in order to meet the requirements of Section 101.161.

Fair notice is, of course, essential to the public's right to cast an intelligent and informed vote. Askew, 421 So. 2d at

155. It should be noted that the courts have construed "fair notice" to mean "actual notice." Id. at 156. Thus, Section 101.161 amounts to a "fair notice" requirement "to assure that the electorate is advised of the true meaning, and ramifications, of an amendment." Id. A proposed amendment "cannot fly under false colors." Id. Voters have been deprived of "fair notice" not only when a proposal is unclear or misleading on its face, but also when omissions may tend to create a misleading effect. Id.; see also, Evans v. Firestone, 457 So. 2d 1351, 1355 (Fla. 1984); Limited Political Terms in Certain Elected Offices, 592 So. 2d 225, 228 (Fla. 1991). Moreover, a ballot must be neutral, and it cannot contain editorial material that may unfairly bias the electorate. See People Against Tax Revenue Mismanagement, Inc. v. County of Leon, 583 So. 2d 1373, 1376 (Fla. 1991). Indeed, the "ballot summary is no place for subjective evaluation of special impact." Evans, 457 So. 2d at 1355 (emphasis added). The "ballot summary should tell the voter the legal effect of the amendment, and no more." Id. (emphasis added). Any "political motivation behind a given change must be propounded outside the voting booth." Id.

The above interpretations place a heavy burden on the sponsors of a proposed amendment. It is the sponsors' burden to ensure that a ballot summary is drafted in such a way as to give the electorate proper notice of the contents of the amendment. The burden of informing the public "should not fall only on the press and opponents of the measure--the ballot title and summary must do this." Askew, 421 So. 2d at 156 (emphasis added).

The S.O.E. amendment wording is highly prejudicial to a particular Florida business rather than being neutral, explanatory in nature or informative about the chief purpose of the amendment. Accordingly, the S.O.E. amendment calls into issue the standards with regard to "neutrality," inappropriateness of "subjective evaluations," as well as "political motivations" behind the proposed amendment. In essence, sponsors of the S.O.E. amendment inappropriately bombard the electorate with much more than the "legal effects" of the S.O.E. amendment. Such "partisan coloring" affects the dignity of the electoral process and should not be validated by this Court.

This case provides the Court with an opportunity to demonstrate that even where a business may develop a politically unpopular perception in the eyes of the public, the sanctity of the electoral process must be preserved and not used by partisan interests to effect an ill-advised change in our Constitution. Moreover, this case provides an opportunity, like no other case before, to underscore that the advisory opinion procedures of the initiative process are not to be used by the sponsors of an amendment to add perceived integrity or truthfulness to unadjudicated and politically motivated factual assertions.

A. The S.O.E. Amendment Ballot Title is Defective.

The title to the S.O.E. amendment, "Save Our Everglades," deceives the electorate and is thereby defective. The S.O.E. amendment suggests by its title that implementation of the amendment will, in effect, restore the Everglades. In essence,

sponsors of the S.O.E. amendment have employed a ballot title as a campaign tactic or selling device for the proposed amendment. Deception is clearly repugnant to the initiative process and to providing the voters with "fair notice." The S.O.E. tax on the sugar industry is simply an ill-advised penalty created by its sponsors, likely having no correlation whatsoever to funds needed to actually accomplish restoration of the Everglades. Because the S.O.E. amendment title "misleads" the public and is by no means "neutral," it unfairly subjects the voters to bias rendering it defective and in violation of Section 101.161, Florida Statutes. See Askew, 421 So. 2d at 155-56; see also, People Against Tax Revenue Mismanagement, 583 So. 2d at 1373.

Although Florida courts have not had occasion to specifically address fatally skewed initiative ballot titles prior to this date, other state courts have and the guidance they provide is instructive. One of the earliest of these decisions was In re: Opinion of the Justices, 171 N.E. 294 (Mass. 1930), involving the adequacy of a ballot "description," i.e., title. The Massachusetts court stated: "It ought to be free from any misleading tendency, whether of amplification, of omission, or of fallacy. It must contain no partisan coloring." Id. at 297.

In Walton v. McDonald, 97 S.W.2d 81 (Ark. 1936), an Arkansas opinion involved a measure including in the title the words "An Act to provide for the assistance of aged and/or blind persons and funds therefor... ," but omitting to state the fact that a primary effect was to impose a tax. The Arkansas court stated:

> The title carries an appeal to all humane instincts. Few would object to some provision being made for the support of the aged and blind; but to levy a general sales tax of 2 per cent, for that, or any other purpose is a different question altogether, and would furnish the elector, however generous his impulses might be, serious ground for reflection if that information were imparted to him by the title of the question upon which he exercised his right of suffrage.

Id. at 82. Accordingly, the court affirmed that there must be no "partisan coloring." Id. at 83.

Similarly, the law pertaining to ballot titles for initiatives in opinions from other state courts uniformly condemns "partisan coloring," "catch phrases," and political "sloganeering." See, e.g., Mason v. Jernigan, 540 S.W.2d 851, 852 (Ark. 1976) (ballot title must be free from catch phrases and slogans which tend to mislead and color the merit of the proposal); Arkansas Women's Political Caucus v. Riviere, 677 S.W.2d 846, 848 (Ark. 1984) (condemning the term "unborn child" in an abortion restricting measure because "[v]ery few would vote against a child, born or unborn, even though they are for a woman's right to have an abortion..."); Jackson v. Clark, 703 S.W.2d 454, 455 (Ark. 1986) (condemning the terms "closed-door deal-making" and "influence-peddling" as illegal partisan coloring); In Re Title, Ballot Title, and Submission Clause, 830 P.2d 963 (Colo. 1992) (striking down an inaccurate and misleading ballot title); In re Initiative Petition No. 344, 797 P.2d 326 (Okla. 1990) (invalidating a deceptive and misleading ballot title).

In Say v. Baker, 322 P.2d 317 (Colo. 1958), the Colorado court perhaps said it best:

> Catch phrases or words which could form the basis of a slogan for use by those who expect to carry on a campaign for or against our initiated constitutional amendment should be carefully avoided . . . in writing the ballot title and submission clause.

Id. at 320.

An analogy to restrictions placed upon titles to legislative enactments by Article III, Section 6, of the Florida Constitution, also provides guidance. In Christensen v. Commercial Fishermen's Ass'n., 187 So. 699 (Fla. 1939), without there being any expressly stated reference to limitations in the Constitution, this Court construed Article III, Section 6, provisions to require that:

> [T]itles to bills must not be misleading or tend to avert inquiry as to the provisions of the act. The title taken as a whole ... must not be so worded as to mislead an ordinary mind as to the real purpose and scope of the enactment.

Id. at 701. Clearly, if the Constitution impliedly condemns deceptive and misleading titles to bills enacted by the Legislature, the Constitution must impliedly condemn deceptive and misleading ballot titles to initiatives that would amend the Constitution. The idea of deception of the electorate is universally repugnant in both processes.

No voter can understand the legal consequences, including taxing, governing and regulatory consequences, of voting for or against the S.O.E. amendment. The S.O.E. amendment title employs a simple "catch phrase" to deceptively sway the electorate to approve the amendment without giving the voters the slightest pause to question underlying motives or the real impact of the amendment. Therefore, this Court should render an opinion that the S.O.E.

amendment title violates Section 101.161, Florida Statutes, and the implied requirements of "fairness" of the Florida Constitution.

B. The S.O.E. Amendment Ballot Summary is Defective.

Similar to the S.O.E. ballot title, the ballot summary is deceptive and is thereby defective. The S.O.E. ballot summary states as follows:

> Summary: Creates the Save Our Everglades trust to restore the Everglades for future generations. Directs the sugar cane industry, which polluted the Everglades, to help pay to clean up pollution and restore clean water supply. Funds the trust for 25 years with a fee on raw sugar from sugar cane grown in the Everglades ecosystem of one cent per pound, indexed for inflation. Florida citizen trustees will control the trust.

The Attorney General stated that, on its face, the S.O.E. amendment does not violate the clarity requirements of Section 101.161, Florida Statutes (1993). The Attorney General is incorrect for several reasons.

Section 101.161 requires an "explanatory statement" of the "substance" of the proposed amendment in "clear and unambiguous language." The S.O.E. ballot summary fails this test because it fails to address the "substance" of the measure in terms of legal effect on the Constitution itself. The S.O.E. amendment is hardly "fair notice" in that it does not indicate the substantial impacts the amendment will have on the Constitution, the impacts the amendment will have on governmental branches and their functions[4],

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[4]The "substance" of the measure imposes on the Legislature's power to tax, takes away from the Legislature the power to direct how tax revenues are to be expended, takes away the legislative power to manage a plan for cleanup of the Everglades, takes away

nor does it in any other manner, guide the electorate to cast an intelligent and informed vote. Rather, the ballot summary matter-of-factly states that by way of this amendment, the Everglades' trust will "restore the Everglades for future generations," and categorically singles out the sugar industry as the "sole" polluter of the Everglades. Without rhyme or reason, the S.O.E. amendment seeks to focus on the sugar industry and suggests to the public that this industry should be distinguished from all others as a black hat which should be penalized for its contribution to pollution of the Everglades. The entire thrust of the S.O.E. amendment is to sway the voters as opposed to informing the voter in "clear and unambiguous language" of the proposal's true effect and "chief purpose."

In Smith v. American Airlines, 606 So. 2d 618, 621 (Fla. 1992), the Court condemned ballot summaries that require voters to "infer a meaning that is no where evident on the face of the summary itself," and those summaries that are "ambiguous about their chief purpose." "Chief purpose," as discussed in other sections herein, has reference to the legal effect of the measure on the governmental structure prescribed by the Constitution. The chief purpose of the S.O.E. amendment proves to be a moving target. Indeed, is the chief purpose of the amendment to levy a tax beyond the reaches of the Legislature, to establish an entity outside the

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legislative authority to define the limits of the Everglades, etc. Similar legal effects occur with regard to Article IV powers of the executive, and upon Articles I, VII and XI. For more detail, see subtopic III.A., infra., pp. 31-35.

present legislative, executive, and judicial branches of government, to abrogate certain Article I rights or possibly to modify the Article XI initiative process? The ballot summary simply fails to lead intelligent, inquisitive voters to the answer. For this reason alone, the S.O.E. summary is defective. The same defaults would also make the summary ambiguous to those voters who might be confused by a number of purposes that seem to be reasonably implied by the provision.

Florida case law provides guidance in instances where ballot summaries were drafted in an effort to mislead the electorate. In Askew v. Firestone, supra, a proposal which attempted to amend the lobbying provisions of Article II, Section 8(e), of the Florida Constitution, was excised from the ballot. The Court found that the ballot summary neglected to advise the public that there was presently a complete two year ban on lobbying before an agency and the amendment's chief effect would be to abolish the present two year total prohibition. Id. at 155. Although the amendment summary indicated that the amendment was a restriction on one's lobbying activities, the amendment actually gave incumbent office holders, upon filing a financial disclosure statement, a right to immediately commence lobbying before their former agencies, which was at that particular point in time precluded. Id. at 156. Therefore, the Court considered the problem "not with what the summary says, but, rather, with what it does not say." Id. The Court stated:

> [T]he people who are asked to approve [constitutional changes] must be able to comprehend

> the sweep of each proposal from a fair notification in the proposition itself that it is neither less nor more extensive than it appears to be.

Id. at 155 (citations omitted). Accordingly, the purpose of Section 101.161, as previously stated, is to assure that the electorate is "advised of the true meaning, and ramifications, of an amendment." Id. at 156. The proposal in Askew was thus held to inappropriately "fly under false colors" and was not suitable for consideration by the voters. Id. The S.O.E. ballot summary violates the standards laid down in Askew and should likewise be stricken from the ballot.

Similarly, in Evans v. Firestone, supra, this Court determined that Amendment 9 violated the provisions of Section 101.161 and, for this reason, among others, it removed the proposal from the ballot. The Court noted that while the first line of the ballot summary stated that Amendment 9 "establishes" citizens' rights in civil actions, it was clear that provision (b) on summary judgments did not create or establish any rights that were not already available.[5] Id. at 1355. The court ultimately held that

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[5]The Court compared the provision of the proposed amendment dealing with summary judgments to the pertinent portion of the ballot summary:

Actual Amendment (b)	Ballot Summary
The Court shall grant a summary judgment on motion of any party when the Court finds no genuine dispute exists concerning the material facts of the case.	Amendment establishes citizens' rights in civil actions: . . . requires courts to dispose of lawsuits when no dispute exists over the material facts, thus avoiding unnecessary costs; . . .

Evans, 457 So. 2d at 1353.

Amendment 9 failed to give voters "fair notice" in "clear and unambiguous" terms. Id. The Court also, in closing, noted that the section of the amendment dealing with summary judgment ended inappropriately with an editorial comment. With regard to editorial statements, this Court laid down additional fairness standards to particularize further the requirements of Section 101.161. The Court stated:

> [T]he 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.

Id.

The S.O.E. ballot summary violates all the standards set in Evans. The S.O.E. amendment plainly fails to inform the voter of the "legal effect of the amendment" on the Constitution itself. Rather, among other things, it focuses on explaining impacts upon the land, i.e., to "save our Everglades," to direct the "sugar cane industry" to "clean up the Everglades" and "to help pay to clean up pollution and restore clean water supply." The summary, in addition, states in no uncertain terms, that the sugar industry "polluted the Everglades." All of this violates the standard that the voter should be informed of the "legal effect" and "no more."

Second, the S.O.E. amendment, by blatantly representing skewed information to the electorate, clearly violates the standards that the amendment not include "subjective evaluation of special impact," and not refer to the "political motivation behind the change." As discussed in more detail in part A., supra, these

restrictions are inherent in both Section 101.161 and Article XI, Section 3, of the Constitution. In essence, the ballot summary is no place for the sponsor of the measure to conduct a partisan political campaign.

The S.O.E. amendment is unabashedly biased and advocates the proponents' predilections in the most militant terms. The S.O.E. amendment summary contains language which places a one-sided argument on the ballot itself, with the goal of persuading voters in the voting booth, not informing them. Florida law requires the Court to preserve the sanctity of the voting booth, and protect voters from the proponents' bias when ballots are cast. No de minimis defense can save the S.O.E. proposal.

With regard to partisan coloring, in People Against Tax Revenue Mismanagement, Inc. v. County of Leon, 583 So. 2d 1373, 1375, the Court examined a one-cent local sales tax referendum where the campaign slogan was made part of the title, "Take charge . . . it's your future (local government infrastructure sales tax)." The text of the ballot asked voters: "Shall a one-cent local option sales tax for capital improvements be levied in Leon County for a period of 15 years in order to construct critical capital improvements . . . ." Id. at 1375-76. Finding the reprinted slogan argumentatively ambiguous, the Court sustained the proposal despite a challenge to the summary's neutrality.

> [T]he use of a 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.

> However, the fact that some questionable language appears on the ballot is not itself enough to invalidate the entire referendum. Rather, the reviewing court must look to the totality of the ballot language, as such language would be construed by a reasonable voter . . . .
>
> * * *
>
> 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.

Id. at 1376. Hence, anything more than a minimal lack of neutrality on a ballot could unfairly bias the electorate, and should not be tolerated. Id.

II. THE S.O.E. AMENDMENT PREAMBLE INAPPROPRIATELY REFLECTS UNADJUDICATED FACTUAL ASSERTIONS AND IS THEREBY DEFECTIVE.

The sponsors of the proposed amendment circulated for required signatures a petition containing not only an amendment to Article X, but also an introductory or preamble statement. The sponsors indicate the preamble as being a part of the amendment text.[6] The petition to this Court for an advisory opinion by the

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[6]Should the preamble not be deemed as "text" of the amendment, the S.O.E. petition is procedurally defective. The petition form is required to "conspicuously contain" three items, i.e., (1) the "full text," (2) a "title," and (3) "substance." See, Fla. Admin. Code R. 1S-2.009. "Other information" may be included in the petition as long as it "does not interfere with required material." Id. Labeling the preamble as part of the "full text" does not "conspicuously" delineate or set apart the preamble from the actual amendment to the Constitution. Further, the preamble "interferes" because the petition heading states that it is a part of the required material, i.e., the text. In essence, the S.O.E. petition form is fatally flawed under Rule 1S-2.009, Florida Administrative Code, and should not have been approved for circulation by the Secretary of State in the initial stages of the initiative process.

Attorney General includes the preamble as part of the text. Thus, the preamble is clearly textual material. The petition circulated for signatures by the sponsors of the amendment states:

> FULL TEXT OF PROPOSED AMENDMENT:
>
> (a) The people of Florida believe that protecting the Everglades Ecosystem helps secure 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. (Emphasis added).
>
> (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 . . .

Clearly, the preamble makes highly prejudicial, unproven factual assertions, essentially stating that the "sugar cane industry" is an evil industry profiting by its pollution of the Everglades as determined by the people of this state and should thereby pay for its misdeeds. These assertions are not adjudicated facts in any court or administrative proceeding providing due process of law, nor has the legislature of the state of Florida made the findings asserted by the S.O.E. preamble. Accordingly, until proven as true statements in an adjudicatory process, the S.O.E. preamble statements are mere conjecture and are without

substance. However, circumstances radically change should this Court approve the petition in an advisory opinion stating that the S.O.E. amendment and the preamble submitted as a part of the initiative petition, meet the constitutional requirements of Article XI, Section 3, of the Florida Constitution. In so doing, the honorable name of this court conveys a high measure of perceived truth to unproven and untested statements in the S.O.E. preamble.[7] Consequently, guarantees of due process under the Florida and U.S. Constitutions would be violated.[8]

III. THE PROPOSED AMENDMENT VIOLATES THE ONE SUBJECT REQUIREMENT OF ARTICLE XI, SECTION 3, OF THE FLORIDA CONSTITUTION.

Under Florida's Constitution, any initiative petition must be confined to one subject. In relevant part, the Constitution provides:

> Section 3. Initiative. - The power to propose the revision or amendment of any portion or portions of this constitution is reserved to the people, provided that, any such revision or amendment shall embrace but one subject and matter directly connected therewith.

Art. XI, § 3, Fla. Const. (emphasis added).

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[7]Carroll v. Firestone, 497 So. 2d 1204 (Fla. 1986), wherein the Court declined to involve itself in the accuracy or inaccuracy of political advertisements, is distinguishable from the case at hand in that Carroll was decided before the advisory opinion process under Article IV, Section 10, Florida Constitution, was added. Further, the collection of signatures by the sponsors was already complete in the Carroll case and thereby could not be used by the sponsors in their political campaign to obtain additional required signatures. Obviously, the circumstances are different in the pending matter.

[8]Due process issues are addressed in more detail in Subsection IV, infra, pg. 37.

In his petition to the Court, the Attorney General opined that the S.O.E. amendment does not violate the one subject requirement of the Florida Constitution. However, the Attorney General provided no in depth analysis to support his conclusion. The Florida Chamber believes that the S.O.E. amendment does, indeed, violate the one subject requirement.

The one subject limitation on constitutional amendments ensures that the voters may consider only singular changes in the Constitution. The principal evil sought to be addressed by the single subject limitation is referred to in legislative jargon as "log-rolling." Fine v. Firestone, 448 So. 2d 984, 988 (Fla. 1984). Log-rolling occurs when several unrelated proposals, each possibly targeting different groups of voters, are presented as a single "package" on the ballot. Log-rolling violates the sanctity of the electoral process. In Fine, this Court stated:

> The single subject requirement in the proviso language of this Section is a rule of restraint. It was placed in the Constitution by the people to allow the citizens, by initiative petition, to propose and vote on singular changes in the functions of our governmental structure.
>
> * * *
>
> It is apparent that the authors of Article XI realized that the initiative method did not provide a filtering legislative process for the drafting of any specific proposed constitutional amendment or revision. The legislative, revision commission, and constitutional convention processes of Sections 1, 2 and 4 all afford an opportunity for public hearing and debate not only on the proposal itself but also in the drafting of any constitutional proposal. That opportunity for input in the drafting of a proposal is not present under the initiative process and this is one of the reasons the initiative process is restricted to single subject changes in

> the state Constitution. 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. An initiative proposal with multiple subjects, in which the public has had no representative interest in drafting, places voters with different views on the subjects contained in a proposal in the position of having to choose which subject they feel most strongly about.

Id. at 988 (emphasis added). Accordingly, the single subject requirement is a rule of restraint. Thus, individuals or groups working out of the sunshine, counseling only among themselves, and planning changes in the Constitution which reflect only their own interests, have been restricted by the authors of our existing Constitution, and by the electorate itself. In the context of these proceedings, this Court has the constitutional obligation to assure that the constitutional restraints imposed by the people are faithfully observed. See, e.g., Dade County Classroom Teachers Assoc. v. Legislature, 269 So. 2d 684 (Fla. 1986); Makemson v. Martin County, 491 So. 2d 1109 (Fla. 1986).

Although both the purpose of and the need for the single subject rule are clear, application of the rule in the initiative context has been difficult. The first major decision addressing this issue was Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2d 337 (Fla. 1978). In that 1978 decision, this Court held that restrictions on the initiative process should be broadly construed so as to not infringe on the people's right to petition. Id. at 342; see also, Weber v. Smathers, 338 So. 2d 819,

822 (Fla. 1976). Six years later, the Court engaged in an abrupt turnabout from its opinion in Floridians. In Fine v. Firestone, the Court adopted the position that strict compliance with the one subject provision in Article XI, Section 3, is essential to the validity of a proposal generated by initiative. 448 So. 2d at 988-89. The Fine court distinguished between the one subject requirement regarding statutory change by the legislature and the one subject requirement regarding constitutional change by initiative and stated:

> [W]e find that we should take a broader view of the legislative provision because any proposed law must proceed through legislative debate and public hearing. Such a process allows change in the content of any law before its adoption. This process is, in itself, a restriction on the drafting of a proposal which is not applicable to the scheme for constitutional revision or amendment by initiative . . .[M]ost important, we find that we should require strict compliance with the single subject rule in the initiative process for constitutional change because our Constitution is the basic document that controls our governmental functions, including the adoption of any laws by the Legislature.

Id. at 989. Hence, the rationale for requiring strict compliance stems from the fact that the initiative process lacks safeguards to ensure good draftsmanship of proposed constitutional amendments. Id.

The S.O.E. amendment is presented to this Court by the Attorney General, like any other initiative petition, without the luxury of anyone other than the sponsors of the initiative participating in its formulation. Assertions within the S.O.E. amendment are merely opinions of its sponsor and are not the

product of due process afforded a respondent in any tribunal. Accordingly, in light of perceived shortcomings in the initiative process from the standpoint of ill-advised revisions, this Court must apply close judicial scrutiny to assure that untested, unproven, misleading or irrelevant information is not erroneously provided to the voters in their consideration of initiative approval or disapproval.

In deciding whether an amendment violates the one subject requirement, the Court requires the disclosure of certain information and has developed several tests in its analysis. In an effort to prevent "log-rolling" and to "protect against multiple precipitous changes" in our Constitution,[9] the Court requires that an initiative proposal "identify the articles or sections of the Constitution substantially affected." Id. at 989. The Fine Court stated:

> This is necessary for the public to be able to comprehend the contemplated changes in the Constitution and to avoid leaving this Court the responsibility of interpreting the initiative proposal to determine what sections and articles are substantially affected by the proposal.

Id. Such disclosure of affected provisions assist the Court in determining whether the proposed amendment conflicts with other provisions of the Constitution. As to conflicting provisions, the Court in Fine stated:

> [H]ow an initiative proposal affects other articles or sections of the Constitution is an appropriate factor to be considered in determining whether there

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[9]Fine v. Firestone, 488 So. 2d at 988.

> is more than one subject included in an initiative proposal.

Id. at 990. Thus, this Court is required to scrutinize the impact an initiative proposal will have upon the entirety of the Constitution.

The next inquiry under the single subject limitation, imposes "a functional as opposed to a locational restraint on the range of authorized amendments." Id. Thus, an initiative proposal may affect more than one article or section of the Constitution, but it may not apply to more than one function of governmental power; i.e., the measure may not "affect [more than one] separate, distinct function of the existing governmental structure of Florida." Id. This point was elaborated by this Court in Evans v. Firestone, 457 So. 2d 1351, in which this Court disapproved a measure that affected both the legislative and judicial branches of the government, stating:

> [W]here such an initiative performs the functions of different branches of government, it clearly fails the functional test or the single subject limitation the people have incorporated into Article XI, Section 3, Florida Constitution.

Id. at 1354 (emphasis supplied).

Furthermore, Fine v. Firestone demonstrates that a measure may violate the functional restraint test if it affects more than one distinct function of a single branch of government, i.e., the power to tax, the power to impose fees and the power to issue bonds to borrow money for capital projects are distinctly different functions of the legislative branch. Thus, this Court is required to scrutinize the impact of an initiative proposal upon the

entirety of the Constitution to evaluate whether the functions of more than one branch of government are affected, as in Evans v. Firestone, or whether multiple functions of a single branch are affected as in Fine v. Firestone.

One of the most fundamental inquiries under the single subject rule is whether a proposed initiative has a "logical and natural oneness of purpose." Fine, 448 So. 2d at 990. To state the test in another way, a proposed amendment is valid if it "may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme. Id.; Limited Political Terms In Certain Elected Offices, 592 So. 2d 225, 227 (Fla. 1991).

"Single function" and "oneness of purpose" aspects of the single subject limitation refers to the operation of "portions of the Constitution," as opposed to "oneness of purpose" in a program that the proponents of an initiative proposal may have in mind. In In re Advisory Opinion to the Attorney General--restricts law related to discrimination, No. 82,674 (Fla. March 3, 1994), this Court stated:

> To ascertain whether "oneness of purpose" exists, we must consider whether the proposal affects separate functions of government and how the proposal affects other provisions of the Constitution.

Slip Opinion at 4.

As we all know, the Florida Constitution is not a mere accumulation of legislative enactments, nor is it a proper document for merely achieving legislative objectives. Instead, it is a document of limitation. See Smathers v. Smith, 338 So. 2d 825, 827

(Fla. 1976); State ex rel Collier Land Investment Corp. v. Dickinson, 188 So. 2d 781, 782 (Fla. 1966). The people have deliberately vested all legislative powers, all executive powers and all judicial powers in the three named branches of government--always subject to the limits of the Constitution itself, but the people have not reserved to themselves, outside their prescribed branches of government, the power collectively to legislate, to execute or to adjudicate. Unless and until the voters exercise their sovereign authority to revise the structure they themselves have adopted for vesting all legislative, executive and judicial power in the named branches of government, then citizens proposing to exercise the rights reserved in Article XI, Section 3, must limit their proposition so that it affects one portion of the Constitution by impacting the constitutional status of only one function of one branch of government.

The S.O.E. amendment fails all of the single subject tests.

A. S.O.E. Amendment Substantially Affects Other Provisions Of The Florida Constitution.

While it is possible for a proposed amendment to affect multiple sections of the Constitution and still embrace a single subject, problems arise when a proposal actually conflicts with several existing sections of the Constitution. See generally, Askew v. Firestone, 421 So. 2d at 156. In Fine v. Firestone, this Court stated that "an initiative proposal should identify the articles or sections of the Constitution substantially affected," so that "the public [will] be able to comprehend the contemplated changes in the Constitution." 448 So. 2d at 989. The S.O.E.

amendment failed to make any effort to identify other sections of the Constitution that were affected. The S.O. E. amendment affects Articles III, IV, V, VII and XI of the Constitution, inappropriately making "multiple, precipitous changes."

1. S.O.E. Subsection 16(a) affects Article III.

The text of the S.O.E. amendment in Subsection 16(a) establishes a Save Our Everglades trust fund. Creation of such a trust is legislative in character. However, the Legislature in this instance would have no power over trust functions with regard to its customary Article III powers in the context of taxation budgeting, planning and appropriation functions. In essence, the S.O.E. amendment is restrictive in nature in terms of legislative functions.

Moreover, expenditure of funds from the trust "to recreate the historical ecological functions of the Everglades ecosystem" is a legislative function but in this instance is not subject in any manner to legislative control or subject to cross-checks within the existing governmental structure.

2. S.O.E. Subsection 16(b) Affects Articles III and IV.

Subsection 16(b) states that "the trust shall be administered by five trustees . . . appointed by the Governor, subject to confirmation by the Senate." This provision affects Article IV, Section 6, dealing with executive departments, by creating a new governmental entity not subject to legislative taxing powers or appropriation scrutiny. In addition, the

Governor's Article IV, Section 1, executive powers are impacted by creation of the new governmental entity.

Further, by designating qualifications for trustees of the trust, and specifying that the "trustees may adopt their own operating rules and regulations," Subsection (b) provisions affect the Legislature's Article III powers. By delegating rule-making authority to the trustees, Subsection (b) takes from the Legislature its power to manage and prescribe how trust funds are expended to further the goal of Subsection (a). Hence, Subsection (b) of the S.O.E. in essence amends Article III, Section 1, of the Florida Constitution by transferring legislative powers to a non-elected body.

3. S.O.E. Subsection 16(c) Affects Articles III and VII.

Subsection 16(c) states that revenues will be generated for the trust by way of a tax on "raw sugar from sugarcane grown within the Everglades ecosystem." This provision affects the Legislature's Article III powers to tax, as well as Article VII, Section 1,[10] regarding the restriction that "no tax shall be levied except in pursuance of law."

Finally, with regard to Subsection (c), by requiring that "all of which funds shall be appropriated by the Legislature to the trustees to be expended solely for the purpose of the trust," affects the Legislature's Article III powers regarding budgeting,

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[10]In Florida Dept. of Education v. Glasser, 622 So. 2d 944 (Fla. 1993), Article VII, Section 1, was held to limit the power to authorize taxes to acts of the Legislature.

planning and appropriation processes. This is also true concerning the price indexing requirement of Subsection (c).

4. S.O.E. Subsection 16(d) Affects Articles III and V.

Subsection 16(d), defines the Everglades ecosystem which again is an act legislative in character. Accordingly, Subsection (d) affects Article III legislative powers. Subsection (d) adds that the "trustees may refine this definition." This in effect not only intrudes on Article III legislative powers, it also impacts Article V powers of the judiciary in construing constitutional parameters of the new governmental entity created by the proposed initiative. By defining and redefining the Everglades ecosystem, the S.O.E. amendment essentially delegates to the trustees the power to make the final determination with regard to the boundaries of its own powers.

5. S.O.E. Subsection 16(e) Affects Articles III, IV, V and XI.

Arguably, Subsection 16(e) affects Article III, Article IV and Article V powers by providing that "nothing shall prohibit the establishment by law or otherwise of other measures designed to protect or restore the Everglades." The upshot of this provision would conceivably allow branches of government other than the Legislature to establish "other measures" to protect the Everglades. Therefore, this provision conceivably affects the powers and functioning of all three branches of government.

Subsection (e) also contains a severance clause.[11] This provision affects the Article XI, Section 3, power of the people to revise the Constitution by transferring to this Court the responsibility of shaping the final substance of the S.O.E. amendment by curing its defects. Thus, Article V judicial powers of this Court are likewise impacted.

In sum, the S.O.E. amendment, in not identifying sections of the Constitution that are impacted by the proposal, prevents the public from being "able to comprehend the contemplated changes in the Constitution." Similarly, lack of disclosure by the S.O.E. amendment, improperly leaves this court "the responsibility of interpreting the initiative proposal to determine what sections and articles are substantially affected by the proposal." This Court has soundly voiced its displeasure in being left in the posture of applying constitutional construction to proposed initiatives. Fine v. Firestone, 448 So. 2d at 989. Thus, the S.O.E. amendment must be held to be invalid.

B. S.O.E. Amendment Inappropriately Affects Multiple Branches and Functions Of Government.

A proposed amendment may not substantially effect more than one branch of government or affect multiple functions within a branch. The S.O.E. amendment inappropriately affects existing governmental branches and their functions in several ways. In summary of the discussion in A. above, the S.O.E. amendment affects the numerous functions and powers of the executive, the

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[11]See herein subsection V, infra, pg. 38, addressing the S.O.E. severance clause.

legislature, the judiciary and the electorate. By affecting multiple branches of government, the S.O.E. amendment thereby clearly violates the functional limitation under the test of Evans v. Firestone, 457 So. 2d 1351. By affecting multiple functions of a given governmental branch, the S.O.E. amendment consequently violates the functional limitation test of Fine v. Firestone, 448 So. 2d 984.

C. S.O.E. Amendment Does Not Have a Logical and Natural Oneness of Purpose.

As previously indicated, "oneness of purpose" and "single function" aspects of the single subject requirement are conceptually considered as limitations on the operation of "portions of the Constitution." As demonstrated in subsection A. above, the S.O.E. proposition affects more than one portion of the Constitution by impacting the constitutional status of more than one function of one branch of government. The S.O.E. amendment affects multiple functions of each of the three branches of government. Indeed, it is arguable that the S.O.E. amendment puts at issue the entire current governmental structure or framework in that it creates a fourth branch of government, giving it the power to tax, the power to formulate its own governing rules, the power to make expenditures it sees fit, the power to sit as a quasi-judicial tribunal and, last but not least, potentially not answer to or be scrutinized in large measure by traditional constitutional cross-checking within the existing governmental structure. Accordingly, this Court must avoid authorizing "multiple,

precipitous changes in our Constitution" by way of the S.O.E. amendment, holding steadfast the existing governmental structure.

For the reasons contained in subsections A, B and C, the S.O.E. amendment violates the single subject requirement of Article XI, Section 3, Florida Constitution.

IV. THE PROPOSED AMENDMENT VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

As the Florida Chamber has alluded to from the beginning of its brief, the S.O.E. amendment blatantly contains a highly prejudicial and inflammatory attack against a long-time business industry in Florida, the sugar industry. Should this Court render an advisory opinion approving the S.O.E. amendment and stating that it complies with Section 101.161, Florida Statutes, and Article XI, Section 3, of the Florida Constitution, sponsors of the amendment will then be able to proffer the advisory opinion as validation of its unadjudicated partisan assertions and overall political posture in obtaining the balance of required signatures to put the S.O.E. amendment on the ballot. An advisory opinion approving the S.O.E. amendment would thus be a substantial boon to the amendment, strongly suggesting that this Court and the State of Florida, by placing the amendment on the ballot, is taking a partisan position.

In Palm Beach County v. Hudspeth, 540 So. 2d 147, 154 (Fla. 4th DCA 1989), the Fourth District Court held that although a county may spend tax dollars to educate the electorate about a referendum initiative, it must do so impartially. The Hudspeth court quoted from Stanson v. Mott, 551 P.2d 1 (Cal. 1976), for the

proposition that the state must not "take sides" in referenda submitted to the people. The California Court stated:

> Indeed, every court which has addressed the issue to date has found the use of public funds for partisan campaign purposes to be improper, either on the ground that such use was not specifically authorized . . . or on the broader ground that such expenditures are never appropriate. . . . A fundamental precept of this nation's democratic electoral process is that the government may not "take sides" in election contests or bestow an unfair advantage on one of several competing factions. A principle danger feared by our country's founders lay in the possibility that the holders of governmental authority would use official power improperly to perpetuate themselves, or their allies, in office; the selective use of public funds in election campaigns, of course, raises the specter of such an improper distortion of the democratic electoral process.

551 P.2d at 9 (citations omitted); see also, Powell v. Mann, 398 U.S. 955, 90 S.Ct. 2169, 26 L. Ed. 2d 539, (affirming the three judge decision in Mann v. Powell, 314 F.Supp. 677 (N.D. Ill. E.D. 1970)). Thus, the government cannot "take sides" in election contests or bestow an unfair advantage on one of several competing factors. For this Court to render a favorable advisory opinion as to the legal sufficiency of the S.O.E. ballot title and summary would unconstitutionally bestow an unfair political advantage upon the S.O.E. sponsors.

V. PROVISIONS OF THE PROPOSED AMENDMENT ARE NOT SEVERABLE.

The S.O.E. amendment contains a standard severability clause designed to preserve portions of the proposed amendment which are valid even if other portions are found to be invalid. The structure of the S.O.E. amendment, with separately numbered

paragraphs, creates a superficial appearance that severance is feasible. However, the Court should not be misled by the simplicity of mechanics, for severance is neither practical nor possible on these facts.

First, severing invalid provisions of a proposed constitutional amendment would be inappropriate in an advisory opinion. There exists no authority which enables the Court to sever provisions in an initiative petition through the advisory process.

Second, prior decisions of the Court addressing the issue of severability in this context do not support severance on the facts presented here. For example, the Court refused to sever disconnected subjects in Fine v. Firestone, 448 So. 2d 984, despite a severability clause in the petition containing the amendment. After finding three separate subjects in the proposed amendment, the Court noted the severability clause was not in the amendment itself, but went on to refuse severance because "such [the severability clause] cannot circumvent this Court's responsibility to determine whether the proposed amendment may constitutionally be placed before the voters." Id.[12]

Should the Court find more than one subject in the text of the S.O.E. amendment, any attempt to sever the remaining subject or

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[12]The Court has never held that a substantive provision can be severed. In Carroll v. Firestone, 497 So. 2d 1204, and in Limitation of Non-Economic Damages in Civil Actions, 520 So. 2d 284, the Court did not say that a severance clause in an amendment itself did not constitute a separate subject in violation of the one subject limitation on initiative petitions.

subjects would be highly inappropriate. To do so would defeat the intent of the proponents of the amendment (despite their mechanical insertion of a severability clause) and it would disenfranchise the existing signatories to this petition.

As to the signatories, severance would place the Court in the impossible position of embarking on a game of speculation. In Fine, the Court said it would not engage in constitutional construction to sort out conflicts between initiative proposals and existing constitutional provisions. Id. at 989. To engage in severability where there are multiple choices would be a far more drastic game of guessing.

VI. STRIKING THE PROPOSED AMENDMENT WILL NOT INTERFERE WITH THE PEOPLE'S RIGHT TO VOTE.

Proponents of the proposed amendment will likely argue that the courts have neither the right nor the privilege to interfere with the "right of the people to vote," endeavoring to cast the issues before the Court in political rather than legal terms. The emotional appeal is strong, but misplaced. Indeed, it was the same argument made in Fine and in probably every other challenge to a proposed constitutional amendment.

In adopting their constitution, the people surrendered a certain amount of their sovereignty. As a result, the people have no longer reserved to themselves an absolute right to vote on any and all proposals to amend their constitution; rather, the people prescribed requirements and limitations as a prerequisite to submission of proposed amendments to the voters. As Justice Thornal wrote in his concurring opinion in Adams v. Gunter, 238 So.

2d 824, 832 (Fla. 1970), with reference to an initiative proposal which was excluded from the ballot:

> I feel that it evidences a courageous application of a rule of restraint which the people themselves have incorporated in our Constitution to protect it against precipitous and spasmodic changes in the organic law. It would be easy to do as appellee urges us to do by transferring to the electorate the burden of making our decisions on an idealistic pronouncement "to let the people decide." This, however, is not, in my view, the fulfillment of our judicial responsibility. It is often more difficult for us as judges to take a stand and "do the people's will" when the responsibility is clearly ours under the law. It is the sort of responsibility which frequently we would as soon not have but which, nevertheless, we must assume as judicial officers.

Id. at 832. As Justice Thornal explained, paramount will of the people regarding procedures and limitations concerning amendment to the Constitution, as set forth in Article XI, must prevail. This Court is not asked to limit the sovereignty of the people; this Court is asked to enforce the will of the people as expressed through their Constitution, the fundamental expression of that will.

While this case does not involve denial of the right of people to vote, it most definitely involves a number of important voter rights. It involves the "right" of the voters not to be burdened with having to vote for or against several separate concepts as a single package. It involves the "right" of the voters to receive fair notice in the voting booth of the true contents and full sweep of a constitutional amendment they are asked to vote upon, and it involves the "right" of the citizens of this state not to be saddled with a major change in their

Constitution because of a misleading ballot summary. The sponsors of an initiative petition carry a heavy burden of respecting those rights. When, as here, they fail to do so, they cannot fairly ask this Court to overlook their failure in the alleged interest of "letting the people vote." In such cases, the overriding responsibility of the Court is to protect the rights of the people to a proper ballot from abuse by private interests.

CONCLUSION

For the foregoing reasons, the proposed S.O.E. amendment sponsored by the political group known as "Save Our Everglades Committee," violates the requirements of Florida law under Article XI, Section 3, of the Florida Constitution, Section 101.161, Florida Statutes (1993), and conflicts with rights guaranteed under the U.S. Constitution. Approval of the S.O.E. amendment by this Court would open a door to special interests that should not be opened. Businesses considering Florida as a potential location would be reluctant to be tossed into the fray of special interest groups seeking retribution from those businesses that are perceived to be politically unpopular. Accordingly, Respondent, the Florida Chamber of Commerce, submits that this honorable Court must issue an advisory opinion in these proceedings invalidating the S.O.E. amendment for purposes of the November 1994 general election.

RESPECTFULLY SUBMITTED this 31st day of March, 1994.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of March, 1994, an original and seven copies of the foregoing have been furnished to the Honorable Sid J. White, Clerk, Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida and copies have been furnished by U. S. Mail to the following:

The Honorable Robert A. Butterworth
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