IN THE SUPREME COURT
STATE OF FLORIDA

IN RE:	)	
	)	
ADVISORY OPINION TO THE ATTORNEY GENERAL -- SAVE OUR EVERGLADES TRUST FUND	)	CASE NO. 83,301

FLORIDA FARMERS FOR FAIRNESS COMMITTEE'S INITIAL BRIEF

Arthur J. England, Jr.
Florida Bar No. 022730
Barry S. Richard
Florida Bar No. 105599
Christopher L. Kurzner
Florida Bar No. 863742
Greenberg, Traurig, Hoffman,
Lipoff, Rosen & Quentel, P.A.
1221 Brickell Avenue
Miami, Florida 33131
Telephone: (305) 579-0500

Counsel for Florida Farmers for
Fairness Committee

Table of Contents

Table of Authorities

Page

Cases

Other Authorities

Identification of the Committee

The Florida Farmers for Fairness Committee is an organization *opposing* the proposed constitutional amendment entitled "Save Our Everglades" which is presently before the Court for an advisory opinion. The Committee is composed of the following persons and organizations:

Ag-Mech, Inc.
Ahern's Service Center
Alico, Inc.
Avant's Garage
Bair Electronics Service, Inc.
Bass-Berner
Beardsley Farms, Inc.
Ben Franklin
Berner Oil Co.
Best Electric Company
M.L. Bishop Farm
Boy & Associates, P.A.
Clewiston Auto Parts, Inc.
Clewiston High School
Clewiston National Bank
Clewiston Paint Center
Clewiston Tire
Click Farms, Inc.
Corbin Farm & Ranch Supply
Couse-Gram Farms
CPI International
Dickson Enterprises
A. Duda & Sons
Earle E. Edwards, DDS
First Bank of Clewiston
First Federal Savings Bank
James D. Forbes, M.D.
J.E. Frierson Farms
Fry Hardware
George W. Fowler Co.
Giddens Furniture
Glades Gas Company
Hare Lumber
Hilliard Brothers
Howell Oil Compay, Inc.
Jackman Cane & Cattle
Johnson-Prewitt & Assoc., Inc.
Jones Lawn Service
Kelly Tractor Co.
D.R. & Russell Kilpatrick
King Ranch, Inc.
Robert J. Kirk, Trustee
Lecane Corp.
Lundy Farm
Lykes Bros., Inc.
Maxis Screen Printing
McDaniel Ranch
McDonald's
M & R Farms
Pape Farms
John C. Perry, C.P.A.
Perry's Ranch
P & T Transfer, Inc.
Rackstraw's Auto Electric, Inc.
Robinson's Pool & Patio
Sonny's Real Pit Bar-B-Q, Inc.
Stitt Ranch, Inc.
B & J Swindle
Three R's, Inc.
John Tiedtke
WAFC
Warr Farms
Western Auto
Bobby Woodward
James O. Woodward
Tommy Woodward
John A. Yaun

Introduction

In one bold and dramatic declarative title, the framers of the proposed constitutional provision now before the Court (the "Everglades petition") express their intention to "Save Our Everglades." They continue their dramatization by providing Florida voters with a voting-booth ballot declaring they are (i) creating a trust "to restore the Everglades for future generations," (ii) directing the sugarcane industry "which polluted the Everglades" to pay for that pollution and a clean water supply, and (iii) commanding that "citizen trustees" will control the Everglades Trust. (A copy of the Everglades petition is attached as an appendix to this brief).

These are highly-charged sentiments, to say the least. They are sure to catch the attention of voters, and, likely as not, their support. Before that happens, of course, the Court will have to evaluate the two questions presented in this proceeding. One question before the Court is whether this form of political sloganeering is permissible for presenting an initiative petition to the voters of Florida.

Another question before the Court is whether the text of the amendment underlying those emotional coatings is confined in substance to only one subject and matters directly connected, in order to meet the threshold constitutional standard for placement on the ballot. A review of the text of the Everglades petition reveals that it contains *three* subjects, not one, in a classical attempt at "logrolling" -- that is, the attraction of diverse constituents who will have to vote for all or nothing in order to achieve (or defeat) a single objective. Those subjects are *taxation*, through the imposition of a revenue-raising levy on the sugar mills of Florida; *the administration of a water management project*, through the planning, execution and expenditure of revenues for a project related to the Everglades ecosystem; and *the*

creation of a new constitutional entity, through the formation of a body to be headed by five trustees from *outside* the existing structure of Florida government.

The initiative petition before the Court violates Article XI, section 3 of the Constitution, and section 101.161 of the Florida Statutes. It should not be placed on the ballot for the November general election.

Statement of the Case and Facts

Pursuant to Article IV, Section 10 of the Florida Constitution, the Attorney General has brought to the Court an initiative petition for a proposed amendment to the Florida Constitution that the Secretary of State has certified meets the threshold number of votes for obtaining an advisory opinion.[1/] The Court has jurisdiction under Article V, section 3(b)(10) of the constitution.

The Court's responsibility in this proceeding is to render an advisory opinion as to the petition's compliance with the one subject requirement for initiative petitions as contained in Article XI, section 3 of the constitution, and with the requirements for ballot title and summary which are expressed in section 101.161 of the Florida Statutes. See *Advisory Opinion to the Attorney General -- Limited Political Terms in Certain Elective Offices*, 592 So. 2d 225, 227 (Fla. 1991) (for convenience "*Limited Terms*").

1/ See sections 15.21, 16.061, Florida Statutes (1993).

Summary of Argument

The Everglades petition fails to meet the requirement of Article XI, section 3, that it contain no more than "one subject and matter directly connected therewith." By including three distinct functional changes to state government and affecting multiple provisions of the constitution, it runs afoul of Article XI, section 3, because it enfolds disparate subjects within the cloak of a broad generality. It further fails to satisfy Article XI, section 3, because the petition includes far more than incidental and reasonably necessary matters designed to effectuate the petition's intended goal.

The ballot title and summary of the Everglades petition violate Section 101.161, Florida Statutes, because they are misleading and because the summary contains politically charged invectives. The title fails to inform the voter of the true meaning and effect of the proposal -- to tax the sugarcane industry. Instead, it adopts as its title the socially desirable goal of saving the Everglades for the purpose of attracting affirmative votes. The result is a title that misleads the public as to the true nature of the proposal. The summary is equally misleading. Not only does it mislabel its tax on sugarcane processors as a fee, but it also does not specify upon what sectors of the sugarcane industry the tax will be imposed. Moreover, the summary is statutorily deficient because it seeks to establish in the constitution a finding that the sugarcane industry is the cause of pollution in the Everglades. Accordingly, the petition should not reach the November ballot.

Argument

I. The proposed amendment.

The Save Our Everglades Committee has proposed to change the Florida Constitution with a petition entitled, "Save Our Everglades." (Ballot title). The petition's summary explains that the amendment's effect is to create a trust named the "Save Our Everglades Trust" to "restore the Everglades for future generations." (Ballot summary). The summary further explains that the sugarcane industry polluted the Everglades, and that the proposed amendment will direct the industry to "help pay to clean up pollution and restore clean water supply." (Ballot summary). The summary explains that the trust will be funded for 25 years with a "fee on raw sugar from sugarcane grown in the Everglades Ecosystem," and that Florida citizens will control the trust. (Ballot summary).

Section (a) of the actual text of the proposed amendment includes a broad statement that Florida's residents believe in protecting the "Everglades Ecosystem" to assure clean water and a healthy economy for future generations. The proposal then lashes out at the sugarcane industry by indicting them for having "profited while damaging the Everglades with pollution and by altering water supply," and suggesting that the industry should help pay to clean up the pollution and restore clean water. It then references that a trust is to be established as the mechanism to allocate the funds generated by a fee assessed on sugarcane grown in the "Everglades Ecosystem."

Section (b) of the proposed amendment specifies that Article X of the Florida Constitution is to be amended by adding section 16. It contains five subsections.

- The first subsection establishes the "Save Our Everglades Trust Fund," whose purpose is to expend funds "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).

(Proposed Article X, section 16(a)).

- The second subsection defines the trust. The trust is to be made up of five trustees appointed by the governor who each serve 5 year terms. The trustees are to be Florida residents with environmental protection experience, but they may not hold elected governmental office during their term as trustees. The trustees are given the power to adopt their own operating rules and regulations and to resolve disputes arising under the administration of the trust or its fundraising mechanism.

(Proposed Article X, section 16(b)).

- The third subsection explains how the trust is to be funded. The State is directed to collect a "fee" from each "first processor of sugarcane" of a penny per pound of raw sugar, increased annually by inflation as measured by the Consumer Price Index, for 25 years, and to appropriate legislatively the revenues collected to the trust.

(Proposed Article X, section 16(c)).

- The fourth subsection defines the term Everglades Ecosystem. The Everglades Ecosystem, according to the proposal, essentially encompasses the entire southern half of Florida, extending into Florida Bay and beyond. However, this definition is subject to alteration by the trustees. They are empowered with the ability of redefinition.

(Proposed Article X, section 16(d)).

- The final subsection contains a provision expressly dispensing with any requirement of implementing legislation for the trust to operate, and a savings clause presumably to allow the proposal to remain, at least in part, if any portion of it is struck down.

(Proposed Article X, section 16(e)).

II. The amendment violates Article XI, section 3 of the Florida Constitution by containing more than one subject.

Under Article XI, section 3 of the Florida Constitution, initiative petitions may be submitted to the voters so long as they contain no more than "one subject and matter directly connected therewith." The Everglades petition violates this provision because it contains three subjects, not one. First, it establishes a tax. Second, it directs the administration of a water management project of vast proportions, involving the planning and carrying out of water control and distribution functions over the entire southern half of Florida. Third, it creates a body of trustees *outside* the scope of existing Florida government, headed by persons who "shall not hold elected government office."

A. The nature of the single subject requirement.

Article XI, section 3 of the Florida Constitution provides in relevant part that an amendment to the constitution proposed by initiative

> shall embrace but one subject and matter directly connected therewith.

What a constitutes a "subject" for the purpose of Article XI, section 3 is not defined in the constitution. The term has been analyzed by the Court over the years, however, in a variety of contexts. In *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984) (for convenience "*Fine*"), the Court held that "one subject" is tested by determining whether the provisions of the initiative petition have "a logical and natural oneness of purpose." That formulation has been repeated and applied ever since. See *In re Advisory Opinion to the Attorney General English -- the Official Language of Florida*, 520 So. 2d 11, 12 (Fla. 1988) (for convenience "*English Only*"); *In re Advisory Opinion to the Attorney General -- Homestead Valuation*

Limitation, 581 So. 2d 586, 587 (Fla. 1991) (for convenience "*Homestead Valuation*"); *Limited Terms*, 592 So. 2d at 227; and just this month in *In re: Advisory Opinion to the Attorney General -- Restricts Laws Related to Discrimination*, ___ So. 2d ___, 19 Fla. L. Weekly S109, S110 (March 3, 1994) (for convenience "*Discrimination*").

"Oneness of purpose," as explained in *Fine*, is determined by considering the functional effect of a proposal on government and appraising its affect on other provisions of the Constitution. *Fine*, 448 So. 2d at 990. That is, the inquiry is

> whether the proposal affects separate functions of government and how the proposal affects other provisions of the constitution.

Discrimination, 19 Fla. L. Weekly at S110. Put another way, the Court has stated that "where a proposed amendment changes more than one government function, it is clearly multi-subject," *Evans v. Firestone*, 457 So. 2d 1351, 1354 (Fla. 1984) (for convenience "*Evans*"); "how an initiative proposal affects other articles or sections of the constitution is an appropriate factor to be considered in determining whether there is more than one subject included in an initiative proposal," *Fine*, 448 So. 2d at 990, and where a proposed amendment affects multiple articles or sections of the constitution, "the defect is not cured by either application of an over-broad subject title or by virtue of being self-contained," *Evans*, 457 So. 2d at 1354.

Under these formulations, the Everglades petition fails the one-subject test. It affects several functions of government, affects multiple provisions of the constitution, and, to compound these failings, it fails to identify other provisions of the constitution that are affected.

These failings violate the constitution not simply as a matter of housekeeping. The purpose of the single-subject requirement of the constitution is to prevent the evil of "logrolling." *Fine*, 448 So. 2d at 988. Logrolling is the practice of aggregating dissimilar provisions to attract support of diverse groups in order to assure the passage of a measure. *Evans*, 457 So. 2d at 1354. Logrolling occurs when a petition causes "multiple precipitous changes in our state constitution." *Fine*, 448 So. 2d at 988. The evil of logrolling is in "voters having to accept part of an initiative proposal which they oppose in order to obtain a change in the constitution which they support." *Id.*

The Everglades petition is a quintessential example of logrolling. It aggregates the imposition of a new one cent tax on sugar mills as a new revenue source for the state, the establishment of a new constitutional body of non-elected citizens, and the self-executing adoption of an administrative superstructure to implement a monumental project of water management that includes, among other things, land acquisition and water allocation throughout the lower half of Florida. The defects of the Everglades petition's treatment of such disparate subjects is "not cured by either application of an over-broad subject title" (Save Our Everglades) or by a declaration in the proposed amendment (implementing legislation is not required for this [amendment]) that it is self-contained. *Evans*, 457 So. 2d at 1354.

B. The Everglades petition is first and foremost a taxing measure.

The chief purpose of the Everglades petition is unquestionably to impose a tax, denominated as a "fee," of one cent on each pound of raw sugar brought to the sugar mills for

refining.[2/] Without that levy, the amendment accomplishes nothing toward its social objective -- restoring the Everglades ecosystem -- that is not already being done (or attempted) through the legislature, through various agencies of Florida government, or as a result of the impetus of a federal lawsuit. The enactment of the Marjorie Stoneman Douglas Everglades Restoration Act[3/] by the Florida Legislature is but one, obvious example of the concerns for the Everglades that have been and are being exhibited by existing agencies of Florida state government.

Section (a) of the proposed amendment articulates an indictment of sugarcane farmers for having caused a deterioration in the condition of the Everglades ecosystem:

> 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.

Patently, the framers of the Everglades petition purposefully set out to burden the sugarcane industry financially for what they believe to have been the cause of perceived deficiencies of the present state of the Everglades ecosystem.

The logrolling feature of the petition is transparently clear. The imposition of this tax is intended to attract support from a wide range of persons outside the sugarcane industry who would favor "clean water" for South Florida, so long as they themselves would not have to foot the multi-million dollar bill for cleanup (assuming the allegations in the petition of existing pollution are true). Yet, those who would support forcing the sugarcane industry to

---

[2/] The tax is imposed on the sugar mills as follows:

> The fee shall be assessed against each first processor of sugarcane at a rate of $.01 per pound of raw sugar . . . .

[3/] § 373.4592, Fla. Stat. (1993).

pay for this desired objective -- clean water -- are forced to accept, whether they want to or not, the creation of a non-governmental body that is *not* responsible to any electorate, and the unbounded freedom of that body to carry out the wide-ranging mandate of the proposed amendment to decide what, when, where, how, and whose lands should be acquired or used for the envisioned Everglades ecosystem restoration project. What makes this even more troublesome than typical logrolled propositions is that this choice is not made clear by the terms of the petition. Persons who want to restore "our" Everglades will have to accept, whether they want to or not, and whether they know it or not, the competitive and over-riding authority of this new body of trustees in relation to existing Florida and federal agencies already charged to one degree or another with the same broad goal -- the South Florida Water Management District,[4/] the Department of Environmental Protection,[5/] the Florida Legislature itself, and the U.S. Corps of Engineers, to name an obvious few.

In sum, the tax on sugarcane could have been levied in a proposed amendment that simply directed that the funds derived from the tax be placed in a trust fund for an Everglades ecosystem restoration project. An amendment in that form ostensibly would have contained one subject only. *See Floridians Against Casino Takeover v. Let's Help Florida*, 363 So. 2d 337 (Fla. 1978), (for convenience "*Casino Takeover*"); *Carroll v. Firestone*, 497 So. 2d 1204, 1206 (Fla. 1986) (for convenience "*State Lottery*"). The framers here were not content to entrust this project to Florida's existing government; they chose to create another body *outside* of the agencies to carry out their purpose.

[4/] § 373.069, Fla. Stat. (1993).

[5/] § 253.002, Fla. Stat. (1993).

The presentation to voters throughout Florida of a tax that will be seen as burden-free to them, in combination with an authorization for the administration of the monumental water management project to be controlled by a body of *non*-governmental Florida citizens, is the essence of logrolling evil.

> It does not give the people an opportunity to express the approval or disapproval severally as to each major change suggested; rather does it, apparently, have the purpose of aggregating for the measure the favorable votes from electors of many persuasions who, wanting strongly enough any one or more propositions offered, might grasp at that which they want, tacitly accepting the remainder.

Casino Takeover, 363 So. 2d at 339 (Fla. 1978) (quoting *Adams v. Gunter*, 238 So. 2d 824 (Fla. 1970) (quoting *McFadden v. Jordan*, 32 Cal. 2d 330, 196 P.2d 787, 796-97 (1948))).

C. The Everglades petition provides the mechanism for the administration of a monumental water management project.

No one can question that this petition -- from its title of "Save Our Everglades", to its summary beginning "Creates the Save Our Everglades Trust for future generations", through the doctrinaire opening paragraph of the amendment itself that begins "The people of Florida believe that protecting the Everglades Ecosystem helps assure clean water and a healthy economy for future generations" -- has the dominant theme of providing for the restoration of the Everglades ecosystem. That theme is augmented in subsection (b) of the petition, by proposing to add to the constitution a new section 16(a) of Article X which would mandate the administration of a water management project of immense proportions. The proposed amendment would implement the framers' objective by creating constitutional authority

> 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).

Recreating the sheet flow of water that coursed over all of South Florida below Lake Okeechobee before canals were dug, levies were built, and the coastal megalopolis known as the "Gold Coast" was created[6/] is a project of mind-boggling proportions.

The question before the Court is whether that authorization is a subject separate and apart from the imposition of a tax on the sugarcane industry, and distinct from the creation of a new constitutional body to administer that program. It is appropriate to note here that the broad powers to be placed in the constitution are virtually all (if not all) found in the existing laws of the state. Chapter 373, Florida Statutes, addresses the water resources of the state comprehensively, with the same general objectives as the Everglades petition[7/] and with extensive governmental mechanisms, having broad authority, to do exactly what the petition would mandate.[8/] Indeed, the Everglades petition would not have been drafted with the directives in proposed subsection 16(a) of Article X if its framers were not distinctly dissatisfied with the *existing* legislative authority of *existing* government mechanisms.

Simply stated, the framers seek to use a *constitutional* directive to override the use of like powers by the agencies presently devoted to the management of the Everglades ecosystem. Unquestionably, this is a "subject" of the proposed amendment that directly affects the functions of the executive and legislative branches of government, just as surely as

---

6/ The Everglades petition defines the area to be affected to extend into Florida Bay and the Keys.

7/ Section 373.016, Fla. Stat. (1993).

8/ The powers are broadly delegated in Chapter 373 to water management districts, with the Everglades area falling under the jurisdiction of the South Florida Water Management District. *See* § 373.069(e), Fla. Stat. (1993).

taxing the sugar mills is an independent, revenue-raising, primitive subject. The Court has already held that these diverse subjects may not be combined into one initiative amendment. In the *Fine* decision, Proposition One was held impermissibly to affect the tax, user-fee, and bonding powers of state government.

The constitutional authorization for five trustees to carry out the Everglades project, of course, could be achieved with a variety of funding sources. Not the least such source is the obvious one -- a use of the full resources of the legislative branch to levy taxes or to create bonding capacity to carry out a mandated program for Everglades restoration. Creating a constitutional directive to carry out the socio-political purpose of the petition does not require a sugarcane tax levy. In the constitutional sense required for Article XI, section 3, the directive for implementing the Everglades restoration project is a separate "subject."

D. The Everglades petition creates a new constitutional body composed of non-governmental personnel.

The third distinctly purposeful feature of the Everglades petition is the creation of the Save Our Everglades Trust Fund ("Trust") -- a body of five trustees who are environmentally knowledgeable persons but *not* connected in any way with the existing government of Florida. Subsection (b) of the amendment would create a new subsection 16(b) in Article X to state:

> trustees shall be residents of Florida with experience in environmental protection, but Trustees shall not hold elected governmental office during service as a trustee.

Unmistakably, the framers of the Everglades petition wish to remove "control" of the Everglades restoration project from any existing branch of state government. The declaration of intent in subsection (a) of the petition announces that

> the people hereby establish a Trust, *controlled by Florida citizens*, dedicated to restoring the Everglades Ecosystem.

Creation of this separate constitutional body of environmental trustees, not responsible to any electorate, not responsible to any elected official, and independent of the existing three branches of Florida government, is a "subject" distinct from others in the Everglades petition.

There already have been legislative attempts at restoring the Everglades ecosystem. *See, e.g.*, § 373.4592, Fla. Stat. (1993). This petition establishes nothing new in that respect. What is distinct about this petition is that the framers apparently have decided environmental restoration must be performed by non-governmental administrators. Surely this can only be considered a distinctiveness of purpose, and subject, from the taxing measure. The establishment of this new constitutional body is designed to take special interests and re-election considerations out of the mix.

This trust should not be confused with other administrative agencies that typically fall within the executive branch (*e.g.*, Health and Rehabilitative Services, Department of Professional Regulation). This is a separate constitutional body that falls outside the domain of any existing branch of government. The only other constitutional administrative entity is the Florida Game and Fresh Water Fish Commission. *See* Article IV, section 9. By its terms, that entity is deemed executive, and the legislature enacts all enabling legislation. The Everglades trust, in contrast, specifically provides that no enabling legislation is necessary. There is no check against its powers.

The problems with this detachment from existing Florida government are manifold. One can envision that the trust will promulgate rules and regulations, and that interested persons want to challenge them. As a separate constitutional body, it is likely that the trust

will take the position, like the Game and Fresh Water Fish Commission, that they are not subject to challenge under the Administrative Procedures Act because they are not an "agency" as defined in Chapter 120, Florida Statutes. *See Association of Florida Community Developers v. Florida Game and Fresh Water Fish Commission*, DOAH Case No. 93-4128 RP, Motion to Dismiss at p. 2 (attached as an exhibit). Considering the magnitude of the trust's powers as delineated in the petition and the hostility of its provision to existing mechanisms of the state, the constitutional status of the trust seems designed to insulate this body from everything and everyone in disagreement.

E. The Everglades petition substantially affects other provisions of the Florida Constitution.

A one-subject inquiry necessarily examines the effect of the proposed amendment on other provisions of the constitution.

> [H]ow an initiative proposal affects other articles or sections of the constitution is an appropriate factor to be considered in determining whether there is more than one subject included in an initiative proposal.

Fine, 448 So. 2d at 990. This inquiry is a feature of the Court's search for the functional effects of a petition on the mechanisms of government.

> [W]e must consider whether the proposal affects separate functions of government and how the proposal affects other provision of the constitution. . . . 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.

Discrimination, 19 Fla. L. Weekly at S110.

The Everglades petition affects the functions of the executive branch through the Trustees' control of the Everglades ecosystem project, and the functions of the legislative

branch by both levying directly a new sugarcane tax[9/] and by creating a self-executing, administrative system.[10/] This encroachment on two independent branches further dooms the notion that the proposal has only one subject. *Evans*, 457 So. 2d at 1354.

The petition doesn't merely broach the functions of the different branches of government, however. It is rife with "collateral effects" on the functions of Florida government. *See Discrimination*, 19 Fla. L. Weekly at S111 (Kogan, J., concurring). For example, the petition affects Article VII, section 14 of the constitution, which authorizes state bonds for pollution control abatement and other water facilities. That provision states that any such bonding authorization requires legislative implementation (in contrast to the Everglades petition which does not), that the facilities erected with any such bonds are to be operated by local governmental agencies, as defined, or an agency of the state (of which the Save Our Everglades Trust Fund by design is not to be one), and that bonds cannot be issued unless a stated level of available revenues and debt service requirements are first met as determined by a state fiscal agency created by law. Another example is the five-year term for Everglades trustees. That conflicts with the *four*-year restriction on the term for public officeholders contained in Article III, section 13.[11/] These conflicts are compounded by the petition's failure, through oversight or otherwise, to identify that these other provisions are affected by

---

9/ The authority to raise revenue is contained in the appropriations function of the Constitution, and assigned to the legislative branch. *See* Article III, section 12, Florida Constitution. *See also* Article VII, sections 1(a) and 1(d), Florida Constitution.

10/ "Implementing legislation is not required for this Section." (Proposed subsection 16(e) of Article X, as contained in subsection (b) of the petition).

11/ The phrase "except as provided herein" offers no escape, as the five-year term being provided for the trustees is not "provided" in the constitution; it is proposed to be added.

the petition's terms (and in the instance of subsection (a) to indicate where the constitution is even intended to be amended).

In sum, the Everglades petition has three distinct subjects contained within it, by any measure or test that the Court has devised. One subject is the imposition of a tax on the sugarcane industry (for having caused a pollution problem, allegedly); another is the authorization for management of a water management project (to assure that the objective is not left to existing agencies of the state, apparently); and a third is the creation of a new constitutional body (for failure of existing agencies to do job, ostensibly). By combining these three disparate subjects under the umbrella of a facially appealing goal (Save Our Everglades), this petition illustrates a classic case of logrolling. Accordingly, the Court must not allow the petition to be placed before the voters in November.

F. The Everglades petition contains matters not "directly connected" with its purported single subject.

Article XI, section 3 requires that matters contained in a constitutional amendment initiative must be "'*directly connected*'" to a subject. *See Fine*, at 988-89.[12/] A petition runs afoul of the "directly connected" requirement where it contains more than incidental and reasonably necessary matters to effectuate the main object and purpose contemplated. *See Floridians Against Casino Takeover v. Let's Help Florida*, 363 So. 2d 337, 339 (Fla. 1978). The imposition of this tax on sugarcane processors is not "directly connected with" the

---

12/ In *Fine*, the Court distinguished the legislative one-subject restriction from the initiative one-subject restriction in three ways. 488 So. 2d at 988. The most important to the Court was the need for strict adherence to the single-subject rule in the initiative process for constitutional change because of the fundamental nature of the document and the far-reaching effects of change to it. *Id.* at 989.

Everglades cleanup process which the proposed amendment will command, or the new constitutional body of trustees which the framers of this petition hope to put in place through the constitution.

The petition has as its social goal the environmental objective of restoring to an earlier condition the ecosystem known as the Florida Everglades. It has as its primary subject the taxation of the industry said to be the cause of its current condition. The petition goes far beyond incidental and reasonable changes necessary to augment the tax. It "enfold[s] disparate subjects within the cloak of a broad generality," and is thus violative of the single-subject requirement. *Evans*, 457 So. 2d at 1351, 1353, *quoted in Discrimination*, 19 Fla. L. Weekly at S110. The petition enfolds taxing the sugarcane industry and appropriating funds for pollution abatement within the cloak of a broad generality -- creation of a Save Our Everglades Trust Fund. An appropriate way to determine whether these proposed changes to the constitution are merely incidental to the purported single subject is to ask whether restoring the Everglades ecosystem to a pre-existing pristine condition could be done without taxing the sugarcane industry, or without creating a citizen superstructure in lieu of existing government agencies. The obvious answer is that the task of returning the Everglades to its condition in a bygone era could be done without either of the other two. Again, that task is precisely the trust of *existing* agencies of Florida government under the Marjorie Stoneman Douglas Everglades Restoration Act. Thus, taxation of the sugarcane industry and creation of the citizen superstructure are neither incidental nor reasonably necessary to effectuate the petition's stated purpose of restoring the Everglades ecosystem.

III. The ballot title and summary violate Section 101.161, Florida Statutes, because they are misleading and because they are unfairly biased by the inclusion of partisan editorial comment.

There is no election issue more significant than the amendment of the State's basic charter, and there is nothing more critical to the integrity of an election than the accuracy and neutrality of a ballot provision. There is an obvious danger inherent in a procedure that allows the primary advocates of a petition amendment to draft the language of the ballot title and summary. The Legislature and this Court, cognizant of the danger, have imposed upon the drafters of the ballot title and summary a simple requirement. Section 101.161, Florida Statutes, mandates that the ballot title and summary state the substance and chief purpose of the measure "in clear and unambiguous language." The Court has insisted upon strict adherence to the principles of fair notice and neutrality embodied in the statutory provision:

> [T]he voter should not be misled and . . . [should] have an opportunity to know and be on notice as to the proposition on which he is to cast his vote . . . . What the law requires is that the ballot be fair and advise the voter sufficiently to enable him intelligently to cast his ballot.

English Only, 520 So. 2d at 13-25 (quoting *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982) (emphasis omitted) (quoting *Hill v. Milander*, 72 So. 2d 796, 798 (Fla. 1954))). *See also Limited Terms*, 592 So. 2d at 228.

The requirement of fair notice and neutrality has been held to include two separate requisites. First, the ballot title and the summary must state "in clear and unambiguous language the chief purpose of the measure." *Limited Terms*, 592 So. 2d at 225 (citing § 101.161(1), Fla. Stat. (1993); *Askew v. Firestone*, 421 So. 2d at 152. Second, the ballot summary must be free of partisan political comment. *Evans*, 457 So. 2d at 1355. The ballot title and summary now before the Court violate both requisites.

In construing the meaning of section 101.161's requirement that the title and summary state the chief purpose of the measure, the Court recently held that:

> The critical issue concerning the language of the ballot summary is whether the public has "fair notice" of the meaning and effect of the proposed amendment.

Discrimination, 19 Fla. L. Weekly at S110. There can be no serious dispute as to the true meaning and effect of the measure now before the Court. It clearly has three significant legal effects. It imposes a special tax upon first processors of sugarcane grown in certain designated areas; it restricts the use of revenue received from such tax; and, it creates a new constitutional body to administer use of that revenue. Not one of these effects is even hinted at by the title. The reference in the title to "Save Our Everglades" is not to the meaning and effect of the amendment, but to the political motivation behind it. In *Evans v. Firestone*, *supra*, 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. at 1355 (emphasis supplied). The title not only fails to inform the voter of the measure's legal effect, it represents the worst form of ballot abuse. It is a campaign slogan designed by the proponents of the amendment to present a tax measure in the most favorable attire. The proponents have the right, of course, to use such a slogan in their campaign for passage of the measure. Having done so, however, they do not have the right to have their campaign slogan appear as a banner at the head of the ballot summary with the imprimatur of the State. Allowing the proponents to place this slogan on the ballot is the equivalent of allowing a candidate to have the phrase "Get Tough on Crime" appear above his or her name on the ballot.

The proposed title imposes upon the opponents of the measure an unfair and practically insurmountable burden. A person voting against the measure is not voting against a tax, but against saving "our" Everglades. Presumably, most, if not all, Florida voters would desire to save the Everglades. Many of those voters, however, may not be willing to accomplish that goal by new taxation or by taxation of the first processors of sugarcane in particular. The title cannot, of course, include all of the details such as reference to first processors. That is the job of the summary. The title, however, should be informative enough to identify the true nature of the of the measure and place the voter on notice to read further. This title is worse than incomplete. It is politically biased. The danger is that many voters, comforted by the benign message communicated by the title, will not read beyond the title, particularly if the ballot is lengthy.

At the very least, the title should inform the voters that they are voting on a taxing measure. Since this country's inception, taxation has been a subject of special significance. To the voters of both Florida and the nation it has been a matter of paramount concern, and in both the Florida and federal constitutions the issue of taxation receives special focus and is narrowly circumscribed. The voters of Florida have been assured, both by Section 101.161 and by the Court, that the ballot title as well as the summary will inform them of the meaning and effect of the measure they are about to vote upon in language that is "clear and unambiguous" and "accurate and informative." *Discrimination*, 19 Fla. L. Weekly at S110; *Smith v. American Airlines, Inc.*, 606 So. 2d 618 (Fla. 1992). Those voters have the right to assume that a title will make some reference to taxation when the legal effect of the measure

is to impose a substantial new tax on the processors of a major state commodity for a period of a quarter century.[13/]

While the title is itself sufficiently misleading and biased to justify striking the provision, the ballot summary is even worse. The opening line of the summary states that the amendment:

> Creates the Save Our Everglades Trust to restore the Everglades for future generations.

Again, the reference is to the measure's political motivation, not its legal effect, and is designed to appeal to voters rather than to inform them. It reflects the ultimate goal of the advocates of the measure, which may or may not be accomplished by the mechanism effectuated by the measure. It is not, however, a neutral description of the measure's *legal effect.*

The summary's second line is undoubtedly the most blatantly biased, inappropriate, and misleading statement any petition advocates have ever attempted to include in a ballot summary. It states:

> Directs the sugarcane industry, *which polluted the Everglades*, to help pay to clean up pollution and restore clean water supply.

(Emphasis supplied).

The political bias of the comment is so self evident as to require no further discussion. However, the phrase is also misleading. The conclusory statement that the sugarcane industry has polluted the Everglades would reasonably lead a voter to assume that some competent

---

[13/] A far more accurate and informative title would be "Everglades Restoration Tax" or words to that effect. Even this title would fail to include reference to the creation of the trust. This problem, however, exists because of the failure of the measure to limit itself to a single subject.

judicial fact finding body has adjudicated the sugarcane industry guilty of such pollution.[14/] Again, the proponents may be free to make the campaign assertion that the sugarcane industry has polluted the Everglades, an assertion that interested parties are equally free to refute. However, the proponents are not entitled to have such an assertion appear in the form of a court approved "adjudication" on the ballot itself.

The summary is also inaccurate and misleading in two other respects. First, by stating that the amendment "directs the *sugarcane industry* . . . to help pay to clean up pollution and restore clean water supply," the summary indicates that the tax imposed will be borne by the entire sugarcane industry. In fact, the tax is levied solely upon "each first processor of sugarcane." Nothing in the summary even remotely suggests that the tax is limited to the first processor. The Court has cautioned that the omission of material facts will render the summary inadequate. *Smith v. American Airlines, Inc.*, 606 So. 2d at 618. The summary not only omits a material fact, that the tax is limited to a discrete segment of the sugarcane industry, first processors, it affirmatively misleads the reader into believing that the amendment spreads the tax load over the entire industry. One voter might vote for the amendment in the belief that it was going to impose a tax upon all segments of the sugarcane industry. Another voter might vote against the amendment in the same belief. Both would have been misled by a summary that is, at best, ambiguous as to who will be taxed.

The failure of the summary to accurately advise the voter of who is actually taxed is compounded by the fact that the summary doesn't even mention the word "tax." Again, in an

---

[14/] While not currently before the Court, it is noteworthy that the measure amounts to a political adjudication of guilt and imposition of penalty without trial and, thus, is both a bill of attainder and a denial of due process in violation of the Florida and federal constitutions.

effort to make the provision appear more palatable, the proponents have used the word "fee" instead of tax. The summary states:

> 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.

The word "fee" is defined in Black's Law Dictionary (6th Ed. 1990) as:

> A charge fixed by law for services of public officers or for use of a privilege under control of government. [Citation omitted.] A recompense for an official or professional service or a charge or emolument or compensation for a particular act or service.

Accordingly, Florida statutes have historically referred to "fees" as charges to compensate for the receipt of particular services from public officials or for the use of public property. *E.g.*, § 15.09, Fla. Stat. (1993) (Secretary of State fees for providing certified copies, etc.); § 30.231, Fla. Stat. (1993) (sheriff's fees for service of summons, etc.); § 380.0685, Fla. Stat. (1993) (fee on entrance to certain state parks). The proposed amendment is not imposed as a charge for the services of any public officials or the use of any public property. It is a pure and simple "tax" on the right to process sugarcane.

The use of the term "fee" instead of "tax" creates, at best, an ambiguity. The summary could be erroneously read to impose a user fee on the use of some governmental service relating to sugarcane, such as inspection, or a fee for the right to grow sugarcane on public land.[15/] A summary that includes an ambiguity that is likely to confuse voters does not

---

15/ This last possible interpretation is made more likely by the failure of the summary, as discussed above, to make any reference to sugar processors, and, instead, the misleading reference to "a fee on raw sugar from sugarcane *grown in the Everglades Ecosystem.*"

comply with the requirements of section 101.161. *Discrimination*, 19 Fla. L. Weekly at S110; *Smith*, 606 So. 2d at 618.

The title and summary were drafted as an instrument of persuasion, designed to appeal to voters rather than inform them. Some language having no relevance to the legal effect of the measure is included solely for the purpose of creating a bias in favor of passage. Other language is crafted to obscure the real legal effect when public awareness of such effect might reduce the liklihood of a positive vote.

On numerous occasions, this Court has delivered a clear message that it will not approve a ballot title or summary that disregards the requirements of section 101.161 in the interest of gaining a political advantage. The drafters of the ballot title and summary now before the Court have patently failed to heed that message.

IV. Error in Attorney General's submission to the Court.

The Attorney General's petition to the Court for an advisory opinion contains an error that may have led to his opinion finding no flaw in the proposal. It requests a "written opinion as to the validity of [the Everglades petition]," but inaccurately explains the scope of the proposed amendment by excluding from the proposed text of the amendment certain language that the framers expressly intended to be placed in the constitution. That language is *all* of the petition's section (a).

In bold print, the petition describes the "FULL TEXT OF PROPOSED AMENDMENT" *before* its section (a). The Attorney General's omission of this heading in his letter in its proper location implies that section (a) was not intended by the framers of the initiative, or by any of those persons signing their petition, to be included in the constitution. In publishing its form order setting the briefing and schedule for this matter, the Court inadvertently perpetuated the Attorney General's error by essentially reprinting his recitation of the matters to be considered for review.

The Attorney General's opinion regarding the sufficiency of the petition and proposed amendment is flawed as a result of this error. Nowhere in his discussion is mention made of the effect of section (a) of the proposed amendment. Accordingly, the Attorney General's opinion that the proposed amendment meets constitutional and statutory requirements must be discounted.

Conclusion

The Court is respectfully urged to direct the Secretary of State to remove the petition from the November ballot.

Respectfully submitted,

Arthur J. England, Jr., Esq.
Florida Bar No. 022730
Barry S. Richard, Esq.
Florida Bar No. 105599
Christopher L. Kurzner, Esq.
Florida Bar No. 863742
Greenberg, Traurig, Hoffman,
Lipoff, Rosen & Quentel, P.A.
1221 Brickell Avenue
Miami, Florida 33131
Telephone: (305) 579-0500

Counsel for Florida Farmers for
Fairness Committee

Certificate of Service

I hereby certify that a true and correct copy of this brief was mailed on March 31, 1994 to Robert A. Butterworth, Attorney General, State of Florida, The Capitol, Tallahassee, Florida 32399-1050.

GTH\ENGLANDA\205123.13\03/31/94

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ASSOCIATION OF FLORIDA COMMUNITY DEVELOPERS; THE FLORIDA CHAMBER OF COMMERCE; FLORIDA CATTLEMEN'S ASSOCIATION; and ASSOCIATED INDUSTRIES OF FLORIDA,

Petitioners,

vs. DOAH Case No. 93-4128 RP

FLORIDA GAME AND FRESH WATER FISH COMMISSION,

Respondent.

MOTION TO DISMISS

Respondent, FLORIDA GAME AND FRESH WATER FISH COMMISSION, by and through its undersigned counsel, respectfully moves for an order dismissing this proceeding, and in support thereof, states as follows:

1. Petitioners have instituted this proceeding pursuant to §120.54(4), Florida Statutes, seeking an administrative determination of the invalidity of a proposed amendment to Rule 39-27.005, F.A.C., as published in the Florida Administrative Weekly, Vol. 19, No. 27, pp. 3790-91 (July 9, 1993). This proposed rule will designate two birds, the white ibis and the black skimmer, as species of special concern.

2. Pursuant to Article IV, Section 9, of the Florida Constitution, Respondent exercises the regulatory and executive powers of the State of Florida with respect to wild animal life and fresh water aquatic life. Respondent's actions in proposing the listing of the white ibis and black skimmer as species of

Exhibit 2

special concern is undertaken pursuant to the constitutional authority.

3. It has been repeatedly and consistently recognized that, when acting under its constitutional authority, the Respondent Commission is not an "agency" as that term is defined in Chapter 120, Florida Statutes. Airboat Association of Florida, Inc. v. Florida Game and Fresh Water Fish Commission, 498 So.2d 629 (Fla. 3d DCA 1986). As a consequence, rules of the Commission adopted pursuant to its constitutional authority are not subject to challenge under the Administrative Procedures Act. Clyde Galloway and C. Ray Dunn v. Florida Game and Fresh Water Fish Commission, DOAH Case No. 91-6604R (DOAH 1991)(copy attached); Ray Haddock & Greyhound Breeders Association of Florida v. Florida Game and Fresh Water Fish Commission, 9 F.A.L.R. 5868 (DOAH 1987); Osborne v. Florida Game and Fresh Water Fish Commission, 3 F.A.L.R. 1483-A (DOAH), affirmed, 404 So.2d 870 (Fla. 1st DCA 1981). Dismissal of this proceeding is therefore mandated.

WHEREFORE, for the foregoing reasons, Respondent would respectfully pray for an order dismissing this proceeding.

Respectfully submitted,

James V. Antista
General Counsel

Florida Game and Fresh Water
Fish Commission
620 South Meridian Street
Tallahassee, FL 32399-1600
(904) 487-1764

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Kathleen Blizzard, Esq., Hopping Boyd Green & Sams, P.O. Box 6526, Tallahassee, FL 32314, this 28 day of August, 1993.

Attorney

IN THE SUPREME COURT
STATE OF FLORIDA

IN RE:)
)
ADVISORY OPINION TO THE ATTORNEY) CASE NO. 83,301
GENERAL -- SAVE OUR EVERGLADES)
TRUST FUND)
)

REQUEST FOR ORAL ARGUMENT

The Florida Farmers for Fairness Committee hereby requests oral argument pursuant to Florida Rules of Appellate Procedure 9.320.

Arthur J. England, Jr., Esq.
Florida Bar No. 022730
Barry Richard, Esq.
Florida Bar No. 105599
Christopher J. Kurzner, Esq.
Florida Bar No. 853742
Greenberg, Traurig, Hoffman,
Lipoff, Rosen & Quentel, P.A.
1221 Brickell Avenue
Miami, Florida 33131
Telephone: (305) 579-0500

Counsel for Florida Farmers for
Fairness Committee

Certificate of Service

I hereby certify that a true and correct copy of this request for oral argument was mailed on April 5, 1994 to Robert A. Butterworth, Attorney General, State of Florida, The Capitol, Tallahassee, Florida 32399-1050.

GREENBERG, TRAURIG, HOFFMAN,
LIPOFF, ROSEN & QUENTEL
101 East College Avenue
Post Office Drawer 1838
Tallahassee, Florida 32301
(904) 222-6891

BARRY RICHARD
Florida Bar No. 0105599

TALL\BSR\19150.1\04/05/94