

**IN THE SUPREME COURT
STATE OF FLORIDA**

In Re: Advisory Opinion to)
 the Attorney General--)
 Save Our Everglades)
 Trust Fund)

Case No. 83,301

**REPLY BRIEF OF RESPONDENT
FLORIDA CHAMBER OF COMMERCE**

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

Stanley James Brainerd
Florida Chamber of Commerce
136 South Bronough Street
Tallahassee, Florida 32302

Fla. Bar No. 217514

GENERAL COUNSEL FOR RESPONDENT

Kenneth R. Hart
and R. Stan Peeler of
Macfarlane Ausley Ferguson &
McMullen
227 South Calhoun Street
Post Office Box 391
Tallahassee, Florida 32302
(904) 224-9115

Fla. Bar No. 0192580 (KRH)

Fla. Bar No. 0394513 (RSP)

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CITATIONS	ii
INTRODUCTION	1
ARGUMENT	1
I. THE PROPOSED AMENDMENT VIOLATES THE STANDARDS PRESCRIBED BY SECTION 101.161, FLORIDA STATUTES.	1
II. THE PROPOSED AMENDMENT VIOLATES THE ONE SUBJECT REQUIREMENT OF ARTICLE XI, SECTION 3, OF THE FLORIDA CONSTITUTION.	3
CONCLUSION	9
CERTIFICATE OF SERVICE	10

TABLE OF CITATIONS

<u>Cases</u>	<u>Page</u>
<u>Askew v. Firestone,</u> 421 So. 2d 151 (Fla. 1982)	2, 4
<u>Carroll v. Firestone,</u> 497 So. 2d 1204 (Fla. 1986)	5, 6
<u>Evans v. Firestone,</u> 457 So.2d 1351 (Fla. 1984)	3, 4
<u>Fine v. Firestone,</u> 448 So.2d 984 (Fla. 1984)	3, 4, 6, 7
<u>Floridians Against Casino Takeover v.</u> <u>Let's Help Florida,</u> 363 So. 2d 337 (Fla. 1978)	5, 6
<u>In Re: Advisory Opinion to the Attorney General</u> <u>English--The Official Language of Florida,</u> 520 So. 2d 11 (Fla. 1988)	2
<u>Kobrin v. Leahy,</u> 528 So. 2d 392 (Fla. 3rd DCA), <u>rev.denied,</u> 523 So. 2d 577 (Fla. 1988)	2
<u>Sylvester v. Tyndall,</u> 154 Fla. 663, 18 So. 2d 892 (1944)	6
<u>Wadhams v. Board of County Commissioners,</u> 567 So. 2d 414 (Fla. 1990)	2
<u>Weber v. Smathers,</u> 338 So. 2d 819 (Fla. 1976)	6
 <u>Constitutional Provisions</u>	
Article IV, Section 9, Florida Constitution	6
Article XI, Section 3, Florida Constitution	3, 6, 7, 9
 <u>Statutes</u>	
Section 101.161, Florida Statutes	1, 2, 9

INTRODUCTION

Briefs in support of the proposed Save Our Everglades ("S.O.E." hereafter) amendment were filed by its Proponents, the Florida Audubon Society and the Save-Our-Everglades Committee. Respondent, The Florida Chamber of Commerce (the "Florida Chamber" hereafter), and several other distinguished respondents filed Initial Briefs to oppose the proposed constitutional amendment. This Reply Brief is filed in response to arguments which are made by Proponents of the proposed amendment in their Initial Briefs.

ARGUMENT

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

Proponents of the initiative petition contend that the title and ballot summary provide all of the information required to adequately inform voters about the issues upon which they are being asked to vote. They argue that it is enough to inform voters that they are being asked to save the Everglades, that this goal will be achieved by imposing a fee on the sugar industry and that the entire management of accomplishing this goal will be entrusted to five unelected Trustees.¹ These statements, however, do not satisfy the requirements of controlling law.

Florida law requires that when an initiative petition impacts or changes existing provisions of the Constitution, as opposed to merely adding a new provision, the voters must be informed as to

¹Everglades Committee Initial Brief, p. 9; Florida Audubon Society Initial Brief, pp. 5, 12 and 13.

the present status of the Constitution, so that they may assess and weigh the significance of the proposed change. See, Wadhams v. Board of County Commissioners, 567 So. 2d 414, 416-17 (Fla. 1990); Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982); see also, Kobrin v. Leahy, 528 So. 2d 392 (Fla. 3rd DCA), rev.denied, 523 So. 2d 577 (Fla. 1988). The proposed amendment changes current organic law. It does not merely add a completely new concept, such as the one in In Re: Advisory Opinion to the Attorney General: English--The Official Language of Florida, 520 So. 2d 11 (Fla. 1988). The absence of any indication in the S.O.E. amendment title and ballot summary that the amendment will substantially affect all three existing branches of government and their functions under the Constitution, renders the proposed amendment totally defective.² Further, the failure to indicate that the S.O.E. amendment would effectively create a fourth branch, empowered with executive, legislative and judicial authority, are material facts, essential to understanding the ramifications of this amendment. As the S.O.E. title and ballot summary stand, the electorate are inappropriately provided no clue of what will be impacted should the S.O.E. amendment become a part of the Constitution. Therefore, this alone prevents the amendment from meeting the requirements of Section 101.161, Florida Statutes.

In its Initial Brief, the Florida Chamber also noted that the proposal lacks neutrality in its thoroughly biased title, ballot

²See, Florida Chamber's Initial Brief at pp. 32-36.

summary and text.³ This evil in the initiative process is self-evident from the petition's biased use of innuendo and conjecture. As a matter of public policy, the Court should not invite sponsors of proposed constitutional amendments, by approving the S.O.E. Amendment, to draft an amendment in language strongly slanted in their favor. The public interest will best be served by placing sponsors on notice that they have a fiduciary obligation to the public to draft initiative proposals fairly and that they violate that obligation at their own risk.

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

The Proponents offer numerous reasons why the one subject limitation of Article XI, Section 3, of the Florida Constitution, is not violated by the S.O.E. Amendment, but surprisingly none withstand even the most cursory analysis.

Proponents first say that the effect and purpose of the Amendment can be summed up in the phrase "Save Our Everglades," a statement (they say) which obviously represents only one subject.⁴ The simplistic catch phrase "Save Our Everglades" does not define a single subject within the meaning of Article XI, Section 3, and it cannot save this proposal. The same argument was put forward and failed to save the "Citizens Choice On Government Review" proposal in Fine v. Firestone, 448 So.2d 984 (Fla. 1984), and the

³See, Florida Chamber's Initial Brief at pp. 12-22.

⁴Everglades Committee Initial Brief, p. 9; Florida Audubon Society Initial Brief, pp. 5, 12 and 13.

"Citizens Rights in Civil Actions" proposal in Evans v. Firestone, 457 So.2d 1351 (Fla. 1984). In both instances, the Court had no trouble rejecting proposed amendments which affected various functions and various branches of government. The ability to express diverse governmental functions in a single, pithy phrase is of no significance. The test for the one subject requirement is not the craftsmanship of a wordsmith, but the effect that the proposal will have on governmental functions embodied in the Constitution.

Proponents also assert that they have placed the proposed change in one discreet section of the Florida Constitution, leaving other provisions of the Florida Constitution unaffected.⁵ Once again, this is an overly simple and formalistic argument, similar to those the Court rejected in Fine and Evans. If the "subject" of the S.O.E. amendment is to "restore the Everglades," the subject is so encompassing and generic as to defy analysis and, just as in Fine, the Court must look more closely at the various parts of the proposal to determine its true effect and meaning. As this Court stated in Askew v. Firestone, the problem with this proposal is in what it does not say. Askew, at 156. If the amendment affects more than one Constitutional function, it fails to satisfy the one subject requirement. In its Initial Brief, the Florida Chamber demonstrated that the proposed amendment is so broad that it substantially affects numerous subjects -- not just separate

⁵Florida Audubon Society Initial Brief at p. 12; Everglades Committee Initial Brief a pp. 11 and 12.

articles of the Florida Constitution. The Florida Chamber's analysis of the one subject requirement in its Initial Brief is neither met nor overcome by the Proponents. There is no need to repeat the analysis here.

Proponents of the S.O.E. amendment suggest the proposed initiative is like the ones in Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2d 337 (Fla. 1978), and Carroll v. Firestone, 497 So. 2d 1204 (Fla. 1986), in that it identifies a funding source and describes a purpose for expenditure.⁶ However, Proponents fail to acknowledge that the S.O.E. amendment completely takes from the Legislature any discretion with regard to funding or expenditures regarding cleanup of the Everglades. Thus, it is distinguishable from the proposal in Floridians, which required selection of unspecified taxes on gambling casinos and appropriation to local governments throughout the state for education and law enforcement in general, with no mandatory targeted spending. Floridians, at 338. Depriving the Legislature of legislative functions in the S.O.E. amendment also distinguishes it from the initiative in Carroll, which merely identified a "potential revenue source" and a "tentative recipient." Carroll, at 1206. Imposing a mandatory tax on a specified business, which is mandatorily appropriated in full to a designated recipient, without discretion exercised by the Legislature, is contrary to the

⁶Everglades Committee Initial Brief at p. 6.

holdings in Floridians and Carroll.⁷ Transgression of legislative functions is fatal to the S.O.E. amendment. Fine, at 990.

Proponents argue that the S.O.E. language "shall be appropriated by the Legislature to the trustees," is virtually the same as the appropriation language for the Game and Fresh Water Fish Commission amendment providing that funds derived from fees "shall be appropriated to the Commission by the Legislature."⁸ The S.O.E. amendment is unlike the Game and Fresh Water Fish Commission amendment in that the proposal to create the Game and Fresh Water Fish Commission was initiated by joint resolution of the Florida Legislature and therefore was not required to adhere to the one subject rule of Article XI, Section 3, of the Florida Constitution. The legislative debate process provided the necessary drafting scrutiny for the Game and Fresh Water Fish Commission amendment as alluded to in Fine.⁹ Fine, at 988-989. Further, the Game and Fresh Water Fish Commission has no source of funds without legislative appropriation. Indeed, license fees are fixed by legislation. Article IV, Section 9. The S.O.E. amendment,

⁷The Everglades Committee Initial Brief, footnote at p. 21, also suggests that the S.O.E. Amendment is more narrowly drawn than the initiative in Weber v. Smathers, 338 So. 2d 819 (Fla. 1976). However, the Weber case was decided prior to Fine where the Court adopted the position that strict compliance with the one subject provision of Article XI, Section 3, is essential to the validity of a proposal generated by initiative. Fine, at 988-989. It should also be pointed out that the Floridians case was decided prior to Fine.

⁸Everglades Committee Initial Brief at p. 14.

⁹See also, Sylvester v. Tyndall, 154 Fla. 663, 18 So. 2d 892, 898 (1944).

conversely, is to be mandatorily funded by a dedicated tax "all of which funds shall be appropriated by the Legislature to the Trustees to be expended solely for the purpose of the Trust." Usurping legislative functions, as previously referenced, is specifically prohibited in Fine.

Proponents, by analogy, also attempt to draw the Court's attention to various state and federal statutory provisions, i.e., taxing petroleum products, lead acid batteries, solvents, the Highway Revenue Act, the Federal Aid in Fish Restoration Act, etc., in an effort to allegedly "demonstrate that the methodology proposed by the S.O.E. initiative is an accepted policy and has met the legislative single subject test."¹⁰ Again, it must be pointed out that these statutes do not have to pass muster of the constitutional single subject requirement of Article XI, Section 3. As previously indicated, the achilles heel of the S.O.E. amendment is that it violates the single subject requirement because the initiative affects and impacts all three branches of government and a multitude of individual governmental functions within each branch, not to mention the creation of a fourth governmental entity with arguably enormous, unbridled powers. Thus, the existing governmental structure of this state is clearly put at issue by the proposed amendment, and the S.O.E. amendment is fatally flawed as a result.

Finally, Proponents in various instances, as expected, call the Court's attention to the peoples' right to vote in a democratic

¹⁰Everglades Committee Initial Brief, pp. 23-25.

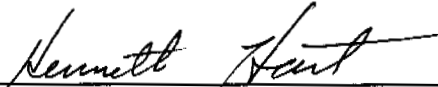
society.¹¹ This suggests, of course, that the Court should "let the people vote" on the S.O.E. amendment regardless of its flaws. This argument was addressed in the Florida Chamber's Initial Brief at pages 40 through 42 and need not be readdressed here.

¹¹Everglades Committee Initial Brief, p. 4; Florida Audubon Society Initial Brief, pp. 5 and 19.

CONCLUSION

For the reasons stated herein, and in Respondent's Initial Brief, the Florida Chamber of Commerce respectfully requests that the proposed "Save Our Everglades" amendment be deemed by this Court to violate the requirements of Section 101.161, Florida Statutes, and Article XI, Section 3, of the Florida Constitution.

RESPECTFULLY SUBMITTED this 15th day of April, 1994.



KENNETH R. HART and
R. STAN PEELER of
Macfarlane Ausley Ferguson &
McMullen
227 South Calhoun Street
Tallahassee, Florida 32302
(904) 224-9115

Fla. Bar No. 0192580 (KRH)
Fla. Bar No. 0354513 (RSP)

ATTORNEYS FOR RESPONDENT

STANLEY JAMES BRAINERD
Florida Chamber of Commerce
136 South Bronough Street
Tallahassee, Florida 32302

Fla. Bar No. 217514

GENERAL COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of April, 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
Attorney General
The Capitol
Tallahassee, Florida 32399-1050

Cass D. Vickers, Esquire
Robert S. Goldman, Esquire
Messer, Vickers, Caparello, Madsen,
Lewis, Goldman & Metz, P.A.
Counsel for U. S. Sugar Corporation
Post Office Box 1876
Tallahassee, Florida 32302-1876

Jon L. Mills, Esquire
Counsel for Save Our Everglades, Inc.
Post Office Box 2099
Gainesville, FL 32602

Fletcher N. Baldwin, Jr.
Counsel for Save Our Everglades, Inc.
University of Florida
College of Law
Holland Hall
Gainesville, FL 32602

Joseph W. Little
Counsel for Florida Sugar Cane League
3731 N.W. 13th Place
Gainesville, FL 32607

Judith S. Kavanaugh, Esquire
Earl, Blank, Kavanaugh & Stotts, P.A.
Counsel for Florida Sugar Cane League
1800 Second Street, Suite 888
Sarasota, FL 34236

Howell L. Ferguson, Esquire
Landers & Parsons
Counsel for Flo-Sun Corporation
Post Office Box 271
Tallahassee, FL 32302-0271

Bruce S. Rogow, Esquire
Counsel for Flo-Sun Corporation
2441 S.W. 28th Avenue
Fort Lauderdale, FL 33312-4554

Arthur J. England, Jr., Esquire
Christopher L. Kurzner, Esquire
Greenberg, Traurig, Hoffman, Lipoff,
Rosen & Quentel
Counsel for Florida Farmers for
Fairness Committee
1221 Brickell Avenue
Miami, FL 33131

Barry S. Richard, Esquire
Greenberg, Traurig, Hoffman, Lipoff,
Rosen & Quentel
Counsel for Florida Farmers for
Fairness Committee
101 East College Avenue
Tallahassee, FL 32301

Carol Sullivan, Esquire
Robert H. Buker, Jr., Esquire
U. S. Sugar Corporation
Post Office Box 1207
Clewiston, FL 33440-1207

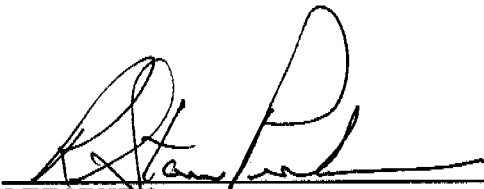
Robert P. Smith, Jr., Esquire
Wade L. Hopping, Esquire
Hopping, Boyd, Green & Sams
Counsel for Sugar Cane Growers
Cooperative of Florida
Post Office Box 6526
Tallahassee, FL 32302

Susan L. Turner, Esquire
Julian F. Clarkson
Holland Knight
Counsel for Associated Industries
of Florida Service Corporation
Post Office Drawer 810
Tallahassee, FL 32302

Cecilia F. Renn
Vice President and General Counsel
Associated Industries of Florida
Service Corporation
316 North Adams Street
Tallahassee, FL 32301

Terry Cole, Esquire
Counsel for Florida Fruit and
Vegetable Association
2700 Blair Stone Road, Suite C
Post Office Box 6507
Tallahassee, FL 32314-6507

W. Dexter Douglass, Esquire
Douglass & Powell
Post Office Box 1674
Tallahassee, Florida 32302-1674



ATTORNEY