OA 5-2-94

IN THE

SUPREME COURT OF FLORIDA

Case No. 83,301

Upon A Request From The
Attorney General For An
Advisory Opinion As To The
Validity Of An Initiative Petition

IN RE:
ADVISORY OPINION
TO THE ATTORNEY GENERAL --
SAVE OUR EVERGLADES TRUST

REPLY BRIEF OF FLORIDA AUDUBON SOCIETY IN SUPPORT OF SAVE OUR EVERGLADES TRUST INITIATIVE

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SUMMARY OF ARGUMENT

The opponents of the Save Our Everglades (SOE) Initiative have failed to demonstrate that the proposal is clearly and conclusively defective. There is a logical and natural oneness of purpose underlying the component parts of the proposed amendment as required by the single subject rule of the Florida Constitution.

Likewise, the opponents of the proposed initiative have failed to demonstrate that the ballot summary is clearly and conclusively defective. The fact that the opponents question some of the language in the ballot summary is not enough to invalidate the initiative because a reasonable voter can discern what the effect of a "yes" or "no" vote on the amendment will be. This is all that is required of a ballot summary to enable the initiative to go to the people for an up or down vote.

ARGUMENT

I.

SAVE OUR EVERGLADES TRUST INITIATIVE DOES NOT VIOLATE THE SINGLE SUBJECT REQUIREMENT OF ARTICLE XI, SECTION 3, FLORIDA CONSTITUTION

Those who would challenge a proposed constitutional amendment presented by the constitutionally guaranteed Peoples' Initiative Procedure are under a heavy burden to show that the proposed amendment is clearly and conclusively defective. Weber v. Smathers, 338 So. 2d 819 (Fla. 1976). Neither the wisdom of the proposed amendment or the quality of its draftsmanship is a matter for judicial review. Weber, supra at 822.

A sample reading of the briefs filed in opposition to the SOE initiative might easily lead one to the conclusion it is impossible to draft a proposed constitutional amendment for voter approval which would satisfy the challengers' perceived standard of review. Fortunately, this is not the standard applied by the Court. The Court's use of the "clearly and conclusively defective" standard of review was chosen out of deference to the great respect the Court has long held for the principle that sovereignty resides in the people. It is the people's constitution, so special interests face a heavy burden to prevent the people from voting on a popularly proposed amendment to their own document. See Weber at 821.

There is a logical and natural oneness of purpose enfolded within the proposed amendment which satisfies the single subject rule. The purpose is to clean and restore the Everglades as that term is defined by the amendment and there is a method to accomplish this stated purpose, i.e., a board of trustees chosen by the Governor, with a funding source, a fee on raw sugar grown in the Everglades region. This

accomplishes the "one purpose" requirement, create a trust to fund and clean up the Everglades.

In order to create a trust there must be a purpose, a trustee and a corpus (funded). The "single purpose," as required here is to do just that.

This natural relationship and connection of the component parts are aspects of a single dominant plan or scheme. The real complaint of the sugar industry and the other concerned allied interests appears to be the fact that the fee on sugar happens to be one of the component parts in the overall dominant plan.

The fact that the sugarcane industry has been explicitly singled out as a source of funding is no more fatal to this amendment than the implicit effect the "Ban the Nets" proposal would have on the ability of commercial fishermen to earn their livelihood, and that met muster. See Advisory Opinion to the Attorney General - Limited Marine Net Fishing, 620 So. 2d 997 (Fla. 1993).

The impact on the executive, judicial and legislative functions of the SOE initiative is minor compared to that approved in Weber, supra. In Weber, the initiative created out of whole cloth an independent commission to conduct investigations and make public reports on all complaints concerning any breach of public trust by any public official who is not a member of the judiciary. The Ethics Commission investigates every public officer from the Governor to the elected town clerk. The SOE initiative is far too narrow in function to be fatally flawed as "clearly and conclusively" defective under the single subject rule, under the Court's less expansive interpretation of that rule delineated in Fine or the perceived wider scope of Weber.

Finally, the challengers' argument that the legislative function of government is

usurped by the imposition of a fee on raw sugar and the dedication of the funds generated by this fee to the control of the trust is not "clearly and conclusively defective" and is essentially a rhetorical political statement which would be best dealt with in a campaign.

In Carroll v. Firestone, 497 So. 2d 1204 (Fla. 1986), the Court held there was no violation of the single subject rule where one subsection of a proposed amendment recognized a potential revenue source. In this case, a fee on raw sugar is the recognized funding source, and another subsection commits those funds for expenditure on a specific purpose inherent in the amendment. See Carroll at 1206. The Court has approved such a scheme in Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2d 337 (Fla. 1978), where revenue generated by a tax on the approved casinos would be used to fund education and law enforcement in spite of the fact it was attacked as having no logical and natural oneness of purpose between components. See, In Re: Advisory Opinion to the Attorney General - English the Official Language of Florida, 520 So. 2d 11, 13-25 (Fla. 1988).

Regardless of whether the sugarcane industry is solely responsible for the current state of the Everglades, there is no denying that sugarcane grown in the geographical area known as the Everglades is connected to and affects the historical ecosystem of the Everglades.

II.

THE BALLOT SUMMARY GIVES FAIR NOTICE OF THE CHIEF PURPOSE OF THE PROPOSED AMENDMENT.

The opponents say the ballot summary is unfair because the second sentence of that summary singles out the sugar industry where it states: "directs the sugarcane industry, which polluted the Everglades to help pay to clean up pollution and restore clean water supply." This language has been vigorously and colorfully attacked by the opponents, which attach may be reduced to essentially an objection to the phrase "which polluted the Everglades." It defies reason to say millions of acres of land in the ecosystem used to grow and harvest sugarcane did not pollute the Everglades.

It is not the Court's purpose to decide whether the drafters of the ballot summary could have done a better job, but only whether the ballot summary misleads the voter so he or she cannot understand the chief purpose of the proposed amendment. The language in the ballot summary should be held sufficient unless it is shown to be clearly and conclusively defective. This ballot summary makes clear that a trust controlled by Florida citizens will be created to restore the Everglades. Funds for the trust will come from a fee on raw sugar from sugarcane grown in the Everglades ecosystem. A reasonable voter making a reasonable effort to understand the chief purpose of the Save Our Everglades initiative will be able discern the consequence of a yes or no vote on the petition, whether to create a trust funded by fees on sugar produced in the ecosystem to carry out cleaning up the Everglades.

The challengers even attacks the ballot title "Save Our Everglades" as a "blatantly political advertisement" and therefore misleading. "Saving the Everglades" is the chief

and only purpose of the amendment. Whether the opponents agree the Everglades need "saving," whether they are "ours," or indeed if there is even an ecosystem known as the "Everglades," does not answer the fact that saving the Everglades is the purpose of the proposal. This ballot title is no more political or misleading than the phrase "LIMITED MARINE NET FISHING" which was approved as a ballot title in Advisory Opinion to the Attorney General -Limited Marine Net Fishing, supra, or the proposal approved in People Against Tax Revenue v. County of Leon, 583 So. 2d 1373 (Fla. 1991), the phrase "TAKE CHARGE . . . ITS YOUR FUTURE."

In People Against Tax Revenue Management, Inc., the Court reviewed a challenge to ballot language which contained the slogan of a group of people who favored the tax and used the word "critical" to describe capital improvements that would be funded by the increase in revenues. The Court agreed that the use of a campaign slogan and the word "critical" may have reflected a lack of neutrality that should not be encouraged in a ballot summary. However, in denying the challenge to the ballot summary language this Court stated that:

> . . . the fact that some questionable language appears on the ballot is not itself enough to invalidate an 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. We have held that a court may interfere with the right of the people to vote on referendum issues only if the language in the proposal is clearly and conclusively defective. (citation omitted.) Typically, we have overturned an election because of defective ballot language where the proposal itself failed to specify exactly what was being changed, thereby confusing voters. (citation omitted). This is especially true if the ballot language gives the appearance of creating new rights or protections, when the actual effect is to reduce or eliminate rights or protections already in existence.

Id. at 1376.

Just as the voters of Leon County were clearly and unambiguously apprised of the fact that they would be imposing upon themselves a one percent local option sales tax for capital improvements, the voters here will know that they are creating a trust fund to help pay for cleaning up the Everglades funded by a fee on raw sugar grown in the Everglades.

The Florida Constitution enumerates the criteria for notice to the electorate on a proposed amendment by peoples initiative in Article XI, Section 5(b). When the framers of the Florida Constitution established the notice requirements for placing a proposed constitutional amendment by initiative on the ballot, those notice requirements became defined and fixed in the constitution and cannot expanded or contracted by the legislature. The U. S. Supreme Court noted in Powell v. McCormick, 395 U. S. 486 1969, that the constitution enumerated three benchmarks for congressional service: age, citizenship and residency. The Court rejected congressional attempts to place an additional burden on membership in that body, quoting Alexander Hamilton from the Federalist Papers.

Just as the single subject requirement of Article XI, Section 3, Fla. Const., defines the substantive limitations on the people's right to amend their constitution through the initiative process, Article XI, Section 5(b) creates the only constitutional limitation on the notice provisions which must be followed to present that same amendment to the electorate.

The ballot summary requirement of § 101.161, Fla. Stats., could be unconstitutional if it extended the requirements for an initiative amendment to make the

ballot. The Court has never found reason to exact less deference from the Florida legislature to the written word of the Florida Constitution than the United States Supreme Court requires of the federal legislature. When either exceed the limits imposed on its authority by the constitutions the constitution controls.

This proposed amendment complies with Article XI, Section 5(b) and § 101.16, Fla. Stats.

CONCLUSION

The Save Our Everglades Trust Initiative satisfies all of the requirements for submission to a vote of the people. In the opinion of the Audubon Society the Court should approve placing the Save Our Everglades Trust Initiative on the ballot to let the people speak.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. MAIL to **ROBERT BUTTERWORTH**, Attorney General, The Capitol, Tallahassee, Florida; **JULIAN CLARKSON and SUSAN L. TURNER**, Holland & Knight, 315 South Calhoun Street, Suite 600, Tallahassee, Florida 32302; **CASS D. VICKERS**, Vickers, Caparello, Madsen, Lewis, Goldman & Metz, P.A., 215 South Monroe, Suite 701, Tallahassee, Florida 32302; **ROBERT P. SMITH**, Hopping Boyd, Green & Sams, 123 South Calhoun Street, Tallahassee, Florida 32314; **ARTHUR J. ENGLAND**, Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A., 101 E. College Avenue, Tallahassee, Florida 32302; **HOWELL FERGUSON**, 310 West College Avenue, Tallahassee, Florida; and **KENNETH R. HART**, Macfarlane, Ausley, Ferguson & McMullen, 227 South Calhoun Street, Tallahassee, Florida 32302; **JON L. MILLS and FLETCHER N. BALDWIN, JR.**, P. O. Box 2099, Gainesville, Florida 32602; **JOSEPH W. LITTLE**, 3731 N. W. 13th Place, Gainesville, Florida 32605; and **JUDITH S. KAVANAUGH**, Earl, Blank, Kavanaugh & Stotts, P.A., 1800 Second Street, Suite 888, Sarasota, Florida 34236 this 15th day of April, 1994.

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