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IN THE
SUPREME COURT
OF FLORIDA

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CLERK, SUPREME COURT

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Chief Deputy Clerk

CASE NOS. 88,343; 88,344; 88,345
(CONSOLIDATED FOR ARGUMENT)

In re: ADVISORY OPINION
TO THE ATTORNEY GENERAL --
FEE ON EVERGLADES SUGAR PRODUCTION (88,343)

In re: ADVISORY OPINION
TO THE ATTORNEY GENERAL --
EVERGLADES TRUST FUND (88,344)

In re: ADVISORY OPINION
TO THE ATTORNEY GENERAL --
RESPONSIBILITY FOR PAYING COSTS OF WATER
POLLUTION ABATEMENT IN THE EVERGLADES (88,345)

BRIEF OF INTERESTED PARTY,
ASSOCIATED INDUSTRIES OF FLORIDA

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TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF THE CASE AND FACTS AND INTERESTS OF ASSOCIATED INDUSTRIES OF FLORIDA	1
SUMMARY OF THE ARGUMENT	3
ARGUMENT	5
I. THE PROPOSED AMENDMENT ENTITLED "FEE ON EVERGLADES SUGAR PRODUCTION" FAILS THE CONSTITUTIONAL AND STATUTORY TESTS	5
A. <u>Title, Summary and Text of Proposed Amendment</u>	5
B. <u>The Proposed Amendment Violates the Single Subject Requirement</u>	6
II. THE PROPOSED AMENDMENT ENTITLED "RESPONSIBILITY FOR PAYING COSTS OF WATER POLLUTION ABATEMENT IN THE EVERGLADES" FAILS THE CONSTITUTIONAL AND STATUTORY TESTS	9
A. <u>Title, Summary and Text of Proposed Amendment</u>	9
B. <u>The Proposed Amendment is Misleading</u>	9
C. <u>The Proposed Amendment Violates the Single Subject Rule</u>	11
III. THE PROPOSED AMENDMENT ENTITLED "EVERGLADES TRUST FUND" FAILS THE CONSTITUTIONAL AND STATUTORY TESTS	12
A. <u>Title, Summary and Text of Proposed Amendment</u>	12
B. <u>The Proposed Amendment Violates the Single Subject Rule</u>	13
C. <u>The Proposed Amendment is Misleading</u>	13
IV. CONSIDERATIONS AFFECTING VALIDITY OF ALL THREE PROPOSALS	14
CONCLUSION	15
CERTIFICATE OF SERVICE	16

TABLE OF AUTHORITIES

	<u>PAGE</u>
<u>Advisory Opinion to the Attorney General</u>	
<u>Re Casino Authorization, Taxation and Regulation</u> , 656 So.2d 466 (Fla. 1995)	10, 11
<u>Advisory Opinion to the Attorney General</u>	
<u>Re --Save Our Everglades</u> , 636 So.2d 1336 (Fla. 1994)	2, 3, 6, 7, 11
<u>Advisory Opinion to the Attorney General</u>	
<u>Re Tax Limitation</u> , 644 So.2d 486 (Fla. 1994)	7, 8, 14
<u>Askew v. Firestone</u> , 421 So.2d 151 (Fla. 1982).	10
<u>Atlantic Coastline R. Co. v. Amos</u> , 115 So. 315 (1927).	6
<u>B.H. v. State</u> , 645 So.2d 987 (Fla. 1994).	7
<u>Fine v. Firestone</u> , 448 So.2d 984 (Fla. 1984).	13

The Florida Constitution

Article I, § 21 and § 22	7
Article II, § 3	7
Article II, § 7	14
Article III, § 19(f)	13
Article IV, § 10	2
Article VII, § 1	7
Article VII, § 9	7
Article XI, § 3	15

Florida Statutes (1995)

Section 101.161	15
Section 215.3207	13
Section 373.4592	14
Section 373.4592(1)(g)	14
Section 403.412	14

STATEMENT OF THE CASE, FACTS AND
INTERESTS OF ASSOCIATED INDUSTRIES OF FLORIDA

This Court consolidated three advisory opinion cases for oral argument and authorized interested parties to file briefs by July 23, 1996. These cases are: Fee on Everglades Sugar Production, No. 88,343; Everglades Trust Fund, No. 88,344; and Responsibility for Paying Costs of Water Pollution Abatement in the Everglades, No. 88,345.

In presenting these three petitions to the Court, the Attorney General stated as follows:

The Court has now received three interrelated initiative petitions after having reviewed and rejected an earlier petition in 1994. That petition sought to amend the Florida Constitution by creating a trust to restore the Everglades funded by a fee on raw sugar. As described in the summary for that petition, it would have

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

The Court in Advisory Opinion to the Attorney General -- Save Our Everglades, 636 So. 2d 1336, 1341 (Fla. 1994), concluded that the 1994 petition violated both the single subject requirement and the ballot title and summary requirements specified in section 101.161, Florida Statutes. The drafters now present three separate petitions seeking to avoid the problems encountered in the 1994 petition.

Associated Industries of Florida ("AIF") is a statewide trade association comprised of more than 7,000 businesses that range from large multinational corporations to small family-owned enterprises. AIF's primary purpose is representing the interests of its

members before the Florida Legislature, various regulatory agencies, and in the judicial system as needed. On behalf of its members, including those who would be directly or indirectly affected by the three proposed amendments, AIF asserts an interest in opposing these ballot initiatives. AIF opposed the 1994 sugar fee petition to this court. Pursuant to this Court's Interlocutory Orders of July 3, 1996, and pursuant to article IV, §10 of the Florida Constitution, AIF submits this brief as an interested party in opposition to the three proposed amendments.

Save Our Everglades, Inc., doing business as Save Our Everglades Committee, sponsored the 1996 "Save Our Everglades" initiative petition which was stricken from the ballot by this Court. In re Advisory Opinion to the Attorney General -- Save Our Everglades, 636 So.2d 1336 (Fla. 1994). The Committee has now presented its second attempt to require Florida's sugar industry to underwrite Save Our Everglades' plan for Florida's Everglades. This round is presented as three interrelated petitions which attempt to accomplish what this Court squarely rejected in 1994.

SUMMARY OF THE ARGUMENT

I.

The proposed amendment entitled "Fee on Everglades Sugar Production" embodies a duality of purposes -- to both restore the Everglades and to compel the sugar industry to fund the restoration. By combining both goals, the proposed amendment constitutes the same "logrolling" this Court previously condemned. See In re Advisory Opinion to the Attorney General--Save Our Everglades, 636 So.2d 1336, 1341 (Fla. 1994). The same initiative also performs the functions of multiple branches of government and therefore violates the single-subject rule. Finally, the amendment substantially affects specific provisions of the Constitution without identifying those provisions for the voters. For these reasons, the amendment should be stricken from the ballot.

II.

The proposed amendment entitled "Responsibility for Paying Costs of the Water Pollution Abatement in the Everglades" suffers from a fatal discrepancy between the summary and the text which misleads the voters by misidentifying the entities from whom the costs of the pollution abatement will be extracted. Similar defects have lead to the invalidation of other petition initiatives by this Court. The proposed amendment also violates the single-subject rule by combining legislative and judicial functions. For these reasons, the proposed amendment should be stricken from the ballot.

III.

The proposed amendment entitled "Everglades Trust Fund" violates the single-subject rule by substantially affecting other articles of the Constitution and by combining the legislative function of establishing a trust with the executive function of directing how the

trust should operate. Moreover, the proposed amendment is misleading by implying in both its title and by virtue of its joint submission with the two other proposals, that all Everglades protection will be administered through the trust and that every penny extracted by virtue of the sugar fee amendment will be deposited into the trust fund.

IV.

The proposed amendments, when considered together, are deficient in wrongly implying there is no independent and preexisting mechanism for either addressing pollution abatement in the Everglades or identifying those responsible.

ARGUMENT

I.

THE PROPOSED AMENDMENT ENTITLED "FEE ON EVERGLADES SUGAR PRODUCTION" FAILS THE CONSTITUTIONAL AND STATUTORY TESTS

A. Title, Summary and Text of Proposed Amendment

Title: Fee on Everglades Sugar Production (5 words)

Summary: Provides that the South Florida Water Management District shall levy an Everglades Sugar Fee of 1 cent per pound on raw sugar grown in the Everglades Agricultural Area to raise funds to be used, consistent with statutory law, for purposes of conservation and protection of natural resources and abatement of water pollution in the Everglades. The fee is imposed for twenty-five years. (61 words)

Full Text Of The Proposed Amendment:

(a) Article VII, Section 9 is amended by a new subsection
(c) at the end thereof, to read:

(c) The South Florida Water Management District, or its successor agency, shall levy a fee, to be called the Everglades Sugar Fee, of one cent per pound of raw sugar, assessed against each first processor, from sugarcane grown in the Everglades Agricultural Area. The Everglades Sugar Fee is imposed to raise funds to be used, consistent with statutory law, for purposes of conservation and protection of natural resources and abatement of water pollution in the Everglades Protection Area and the Everglades Agricultural Area, pursuant to the policy of the state in Article II, Section 7.

(2) The Everglades Sugar Fee shall expire twenty-five years from the effective date of this subsection.

(3) For purposes of this subsection, the terms "South Florida Water Management District," "Everglades Agricultural Area," and "Everglades Protection Area" shall have the meanings as defined in statutes in effect on January 1, 1996.

(b) This subsection shall take effect on the day after approval by the electors. If any portion or application of this measure is held invalid for any reason, the remaining portion or application, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and application.

B. The Proposed Amendment Violates the Single Subject Requirement

In Save Our Everglades, this Court struck down a previous version of the sugar tax initiative on the ground that it embodied a "duality of purposes," i.e., to both "restore the Everglades" and to compel the sugar industry to fund the restoration. In re Advisory Opinion to the Attorney General--Save Our Everglades, 636 So.2d 1336, 1341 (Fla. 1994). The current version suffers from precisely the same flaw, combining the goal of restoring the Everglades with the directive to fund the clean up through a fee of "one cent per pound of raw sugar, assessed against each first processor from sugarcane grown in the Everglades Agricultural Area." This duality of purpose constitutes the same "logrolling" this Court condemned in Save Our Everglades, 636 So.2d at 1341.

Moreover, like its 1994 predecessor, the current sugar fee initiative performs the functions of multiple branches of government and therefore violates the single-subject rule. The current initiative "implements a public policy decision of statewide significance" and "imposes a levy, whether characterized as a fee or tax -- on raw sugar" and therefore performs an essentially legislative function. Save Our Everglades, 636 So.2d at 1340; Atlantic Coastline R. Co. v. Amos, 115 So. 315, 320 (1927) ("[a] levy is a limited legislative function. . .").

Like its predecessor, the current initiative also "contemplates the exercise of vast executive powers" by empowering the South Florida Water Management District to collect

a levied fee on raw sugar and to raise and expend funds for purposes of conservation and protection of natural resources. See Save Our Everglades, 636 So.2d at 1340. Under the current sugar tax initiative, the South Florida Water Management District would also be required to perform the executive branch function of determining "each first processor, from sugarcane grown in the Everglades Agricultural Area."

Finally, the current initiative also performs a judicial function by imposing liability and assessing penalties on the sugarcane growers in the "Everglades Agricultural Area." As the court found in Save Our Everglades, "[t]his provision renders a judgment of wrongdoing and de facto liability and thus performs a quintessential judicial function." 636 So.2d at 1340.

Because the current initiative performs functions of each branch of government, it violates the single subject requirement of the Florida Constitution.

This Court recently struck a proposed tax limitation amendment on the ground that it "substantially affected specific provisions of the Constitution without identifying those provisions for the voters." Advisory Opinion to the Attorney General re Tax Limitation, 644 So.2d 486 (Fla. 1994). The current initiative suffers from the same infirmity. By imposing liability and assessing penalties, the initiative implicates the processors' rights to open access to the courts and to trial by jury guaranteed by article I §§ 21 and 22 of the Florida Constitution. The initiative also affects article VII, § 1, which prohibits taxes from being levied "except in pursuance to law," and article VII, § 9, which authorizes special districts to levy taxes. Finally, as discussed above, the initiative purports to empower the District to encroach the functions of multiple branches in violation of article II, § 3. See B.H. v. State, 645 So.2d 987 (Fla. 1994).

Because the current initiative fails to give adequate notice that it substantially affects numerous provisions of the Constitution, it must fail. Tax Limitation, 644 So.2d at 491-494.

II.

THE PROPOSED AMENDMENT ENTITLED "RESPONSIBILITY FOR PAYING COSTS OF WATER POLLUTION ABATEMENT IN THE EVERGLADES" FAILS THE CONSTITUTIONAL AND STATUTORY TESTS.

A. Title, Summary and Text of Proposed Amendment

Title: Responsibility for Paying Costs of Water Pollution Abatement
in the Everglades (11 words)

Summary: The Constitution currently provides the authority for the
abatement of water pollution. This proposal adds a provision
to provide that those in the Everglades Agricultural Area who
cause water pollution within the Everglades Protection Area or
the Everglades Agricultural Area shall be primarily responsible
for paying the costs of the abatement of that pollution. (54
words)

Full Text of the Proposed Amendment:

(a) The Constitution currently provides, in Article II, Section
7, the authority for the abatement of water pollution. It is the
intent of this amendment that those who cause water pollution
within the Everglades Agricultural Area or the Everglades
Protection Area shall be primarily responsible for paying the
costs of abatement of that pollution.

(b) Article II, Section 7 is amended by inserting (a)
immediately before the current text, and adding a new
subsection (b) at the end thereof, to read:

(b) Those in the Everglades Agricultural Area who
cause water pollution within the Everglades Protection
Area or the Everglades Agricultural Area shall be
primarily responsible for paying the costs of the
abatement of that pollution. For the purposes of this
subsection, the terms "Everglades Protection Area" and
"Everglades Agricultural Area" shall have the meanings
as defined in statutes in effect on January 1, 1996.

B. The Proposed Amendment is Misleading

The proposed amendment suffers from a fatal discrepancy between the summary and
text. The summary states that only "those in the Everglades Agricultural Area who cause

water pollution within the Everglades Protection Area or the Everglades Agricultural Area" are to be "primarily responsible." The text of the amendment reaches a much broader class of those purportedly responsible, including all entities "who cause water pollution within the Everglades Agricultural Area or the Everglades Protection Area." The summary misleads the voter by misidentifying the entities from whom the costs of the pollution abatement will be extracted.

A similar defect invalidated a proposed casino initiative reviewed by the court in Advisory Opinion to the Attorney General re Casino Authorization, Taxation and Regulation, 656 So.2d 466 (Fla. 1995). In Casino Authorization, this court noted that while the summary stated that the amendment would have allowed casinos at hotels, it did not indicate that the actual text would have allowed casinos at other places of lodging. 656 So.2d at 468-69. What's more, the portion of the summary that stated the amendment would have allowed casinos on riverboats and commercial vessels was found to be misleading because the text permitted casinos on landlocked buildings constructed to look like casinos. 656 So.2d at 469.

In the same manner, the summary in this case does not accurately describe the scope of the text. Like the defective amendment in Casino Authorization, the language "is misleading not because of what it says, but what it fails to say." 656 So.2d at 469; see also, Askew v. Firestone, 421 So.2d 151, 156 (Fla. 1982). In this case, the summary to the proposed amendment fails to say that the amendment would actually subject non-Everglades individuals, industries and governmental entities to potential payment for costs of the abatement program. Because the summary does not "clearly and unambiguously" inform the voters of the purpose and substance of the amendment, the ballot summary is defective and

the proposed amendment should not be place on the ballot. Casino Authorization, 656 So.2d at 469.

C. The Proposed Amendment Violates the Single Subject Rule

The proposed amendment, like its sugar fee counterpart, violates the single subject rule by combining the legislative and public policy function of deciding who should pay for Everglades clean up with the judicial function of identifying those allegedly responsible for the water pollution and "rendering a judgment of de facto liability." Save Our Everglades, 636 So.2d at 1340. Accordingly, it must be stricken from the ballot as violative of the Constitution.

III.

THE PROPOSED AMENDMENT ENTITLED "EVERGLADES TRUST FUND" FAILS THE CONSTITUTIONAL AND STATUTORY TESTS.

A. Title, Summary and Text of Proposed Amendment

Title: Everglades Trust Fund (3 words)

Summary: Establishes an Everglades Trust Fund to be administered by the South Florida Water Management District for purposes of conservation and protection of natural resources and abatement of water pollution in the Everglades. The Everglades Trust Fund may be funded through any sources, including gifts and state or federal funds. (49 words)

Full Text of the Proposed Amendment:

- (a) Article X is amended by adding a new section 17 at the end thereof, to read:

SECTION 17, Everglades Trust Fund.

(a) There is hereby established the Everglades Trust Fund, which shall not be subject to termination pursuant to Article III, Section 19(f). The purpose of the Everglades Trust Fund is to make funds available to assist in conservation and protection of natural resources and abatement of water pollution in the Everglades Protection Area and the Everglades Agricultural Area. The trust fund shall be administered by the South Florida Water Management District, or its successor agency, consistent with statutory law.

(b) The Everglades Trust Fund may receive funds from any source, including gifts from individuals, corporations or other entities; funds from general revenue as determined by the Legislature; and any other funds so designated by the Legislature, by the United States Congress or by any other governmental entity.

(c) Funds deposited to the Everglades Trust Fund shall be expended for purposes of conservation and protection of natural resources and abatement of water pollution in the Everglades Protection Area and Everglades Agricultural Area.

(d) For purposes of this subsection, the terms "Everglades Protection Area," "Everglades

Agricultural Area," and "South Florida Water Management District" shall have the meanings as defined in statutes in effect on January 1, 1996.

- (b) If any portion or application of this measure is held invalid for any reason, the remaining portion or application, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and effect.

B. The Proposed Amendment Violates the Single Subject Rule

This Court has held that it is appropriate to consider how a proposed amendment affects other articles of the Constitution in determining whether the proposed amendment violates the single subject rule. Fine v. Firestone, 448 So.2d 984 (Fla. 1984). The trust fund proposal clearly affects article III, § 19(f) and its implementing legislation at section 215.3207, Florida Statutes (1995) which provide that trust funds may be created only by the Legislature and only if passed by a three-fifths vote of the membership of each house in a separate bill for that purpose only. Moreover, by combining the Legislative function of establishing a trust with the executive function of directing how the trust should operate, the proposed amendment addresses multiple subjects.

C. The Proposed Amendment is Misleading

The proposed amendment is misleading by implying in both its title and by virtue of its joint submission with the two other proposals, that all Everglades protection will be administered through the trust, and that every penny extracted by virtue of the sugar fee amendment will be deposited into the trust fund. In fact, the actual text provides that the trust fund will merely assist in such efforts and "may" collect money from various sources.

IV.

CONSIDERATIONS AFFECTING VALIDITY OF ALL THREE PROPOSALS

In striking down a proposed amendment which would have imposed a limit on taxes, this Court held that the amendment was misleading by implying there was no limitation on taxes in existing Constitutional provisions or law. Advisory Opinion to the Attorney General re Tax Limitations, 655 So.2d 486 (Fla. 1984).

The proposed amendments are equally deficient. They wrongly imply that there is no independent and preexisting mechanism for either addressing pollution abatement in the Everglades or identifying those responsible.

Article II, §7 currently provides that it is the policy of this state to protect its natural resources and that "[a]dequate provision shall be made by law for the abatement of air and water pollution" In carrying out this mandate, the Legislature has passed the comprehensive Everglades Forever Act, §373.4592. According to the Legislature, this Act, together with the Everglades Construction Project and the Regulations promulgated pursuant thereto, "provide a sound basis for the state's long-term clean up and restoration objectives of the Everglades." Section 373.4592(1)(g). The Legislation incorporates construction, testing and research and utilizes "the best available technology for achieving interim water quality goals of the Everglades Program." Section 373.4592(1)(g).

Moreover, implementing the mandate of Article II, §7, the Legislature has already created a cause of action for the alleged pollution the proposed amendments purport to address. Section 403.412, Florida Statutes (1995).

The proposed amendments mislead the voters by implying there is no current and

enforceable mechanism under Florida's Constitution and statutes to address the problem of water pollution in Florida.

A similar deficiency led this Court to reject the tax limitation proposal in 1994. The same result should occur here: the three proposed initiatives should be rejected as violating the legal requirements of article XI, § 3, Florida Constitution, and section 101.161, Florida Statutes (1995), and should be stricken from the ballot.

CONCLUSION

For the reasons expressed above, Associated Industries of Florida opposes the three initiatives and urges the Court to strike them from the ballot.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U. S. Mail, this 23rd day of July, 1996, to the following:

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