SUPREME COURT OF FLORIDA

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)

CASE NOS. 88,343, 88,344 and 88,345
Consolidated for Argument

BRIEF OF THE FLORIDA FARM BUREAU FEDERATION IN OPPOSITION TO THE THREE PROPOSED AMENDMENTS

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Case Nos. 88,343
88,344
88,345
In Re: Advisory Opinion to the Attorney General

CERTIFICATE OF INTERESTED PERSONS

Counsel for Florida Farm Bureau Federation certifies that the following persons and entities have or may have an interest in the outcome of this case.

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3. Honorable Robert A. Butterworth
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SUMMARY OF THE ARGUMENT

After this Court struck the Save Our Everglades proposed citizens' initiative amendment from the ballot in 1994, the same Save Our Everglades Committee split the proposal into three segments and proposed them again as chapter two of this same controversy. In short, almost all of the arguments which this Court previously accepted are now equally applicable to this second effort and the three new ballot initiatives should again be stricken.

The Committee should not have used the same words: "Save Our Everglades". This Court soundly condemned these words as "misleading" and the Committee well knew it and should have abandoned the misleading words.

In addition to the arguments which this Court accepted in the previous Save Our Everglades I case, the new ballot initiatives are less detailed leaving many new uncertainties and ambiguities. As a result, it is impossible to summarize these amendments in any clear and definitive fashion so that the voters will know what they are actually voting on. The summaries and titles of all three amendments are thus fatally defective.

Each of the three new amendments violate the single subject rule of restraint imposed in the Constitution and each amendment is thus properly stricken from the ballot based upon numerous single subject violations. These amendments, whether considered together or separately simply do not pass single subject muster. These ideas and concepts will simply never be subject to inclusion in the

Florida Constitution through the Citizens' Initiative Amendment process which is appropriately restricted to simple one subject amendments. No further redrafting will solve the basic problem--the amendments contain too many different concepts to be added to the Constitution through this restricted amendatory.

STATEMENT OF THE CASE AND FACTS

On July 3, 1996, this Court issued three Interlocutory Orders dealing with each of the three Save Our Everglades proposed amendments. These interlocutory Orders required that all interested parties file briefs by July 23, 1996 and that reply briefs be filed within approximately 20 days thereafter. These consolidated cases concern three proposed citizen initiative amendments designated: (1) Fee on Everglades Sugar Production (2) Everglades Trust Fund, and (3) Responsibility for Paying Costs of Water Pollution Abatement in the Everglades. These cases are designated 88,343, 88,344 and 88,345 by this Court and may be most easily referred to as (1) the Fee amendment (2) the Fund amendment, and (3) the Fault amendment. More accurately, the fee amendment is quite obviously a Tax amendment while the Fund and Fault amendments are so vague it is difficult to even characterize them.

Save Our Everglades, Inc., doing business as Save Our Everglades Committee, filed and sponsored the 1994 Save Our Everglades Initiative Amendments. This Court soundly condemned that effort and struck it from the ballot. In Re: Advisory Opinion to the Attorney General--Save Our Everglades, 636 So. 2d 1336 (Fla. 1994). The same committee with the same name then submitted three new petition forms, ballot titles and ballot summaries in March of 1996. This 1996 effort is simply Chapter 2 of the unsuccessful 1994 amendment attempts.

After its initial submission in March, on April 3, 1996, the

Save Our Everglades Committee submitted a single form petition to the Division of Elections. This form was different from the initial form and thereafter the Save Our Everglades Committee collected signatures statewide utilizing both the separate forms and the single form of unified petitions. Both the single forms and the unified forms and indeed every scrap of paper connected with this entire initiative petition effort contain the words "Save Our Everglades".

On June 18, 1996, the Secretary of State notified the Attorney General that the Save Our Everglades Committee had met the necessary signature requirements under Section 15.21, Florida Statutes, and thereafter the Attorney General petitioned this Court by letter of June 26, 1996 requesting three separate advisory opinions in these interrelated matters. The Save Our Everglades Committee appeared through counsel in this court seeking to accelerate the case which efforts were denied by this Court's Interlocutory Orders of July 3, 1996. The Court allowed for the filing of timely briefs by interested parties. The Florida Farm Bureau Federation is an interested and clearly affected party and submits this brief in opposition to the three ballot initiatives.

Status and Position of Florida Farm Bureau Federation

"Save Our Everglades is Misleading"

The Florida Farm Bureau Federation is the state's oldest and largest general-interest agricultural organization. It is a non-profit federation and was originally started in 1941. There are more than 110,000 member families in Florida who produce over 220 agricultural products from every county in the state. No other single organization represents Florida's farmers in all pursuits as universally as does the Florida Farm Bureau Federation. The Federation is composed of 62 county Farm Bureaus and has both Active member (farmers and ranchers) and Associate Members who are interested in and supportive of Florida Agriculture. The Federation is active in conservation and preservation of Florida's natural resources in an approach consistent with the overall betterment of agriculture and the general public good.

The Federation is obviously an interested party, and the Federation strongly opposes placement of the three Save Our Everglades amendments on the ballot. Initially, the Farm Bureau strongly disagrees with the basic words--"Save Our Everglades" and again points out that these amendments are "flying under false colors". This Court has already condemned this title "Save Our Everglades" as misleading and the Farm Bureau joins in and reasserts that condemnation as to this second attempt by the same "Save Our Everglades" Committee. See Save Our Everglades I p. 1341. This title has not been used in the actual amendment language, but the

words "Save Our Everglades" are printed on every piece of paper connected with the signature gathering process. Every piece of paper printed by the Committee uses these words. Indeed, these words "Save Our Everglades" are contained in this Court's most recent July 3, 1996 Interlocutory Orders. The committee could have changed its name had it wished to comply with this Court's previous opinion.

The words "Save Our Everglades" are extremely misleading and are in fact fully intended by the sponsors to give the impression to the signers of petitions and eventual voters that the Everglades are in need of saving and that the sugar industry is actually destroying the Everglades. Nothing could be further from the truth. Indeed, Florida Farmers and sugar producers in particular are already engaged in far ranging efforts directed at the preservation of the Everglades and all other agricultural resources across the state of Florida.

The title "Save Our Everglades" is "misleading" and the sponsors of these proposals cannot possibly claim that they were unaware of this Court's condemnation of this title. Frankly, their continual use of this misleading catch-phrase is an affront to the public and this Court.

In the 1994 Save Our Everglades opinion this Court stated at page 1341 as follows:

> "SAVE OUR EVERGLADES"--is misleading. It implies that the Everglades is lost, or in danger of being lost, to the citizens of our State, and needs to be "saved" via the proposed amendment.

* * *

> A voter responding to the emotional language of the title could well be misled as to the contents and purpose of the proposed amendment. "A proposed amendment cannot fly under false colors; this one does." Askew v. Firestone, 421 So.2d at 156.

The Committee knew this language was misleading yet they have intentionally and purposely sprinkled it across every page of every publication. The fact that they have deleted it as the technical title to the three different amendments is a distinction without a difference because the title "Save Our Everglades" is still on every piece of paper. Further, Section 101.161(1), Florida Statutes, which governs the required title of any proposed constitutional amendment states: "The ballot title shall consist of a caption, not exceeding 15 words in length by which the measure is commonly referred to or spoken of." It is clear that these amendments are "commonly referred to and spoken of" as the "Save Our Everglades" amendments. The sponsors of the amendments have chosen these words and continue to reassert them to the public, and indeed even to this Court. Thus, the sponsors are responsible for how these amendments are "commonly referred to and spoken of" and they cannot continue to use these particular misleading words while simultaneously asserting they have now adopted new and less offensive titles. The sponsors consistently and commonly refer to their amendments as the Save Our Everglades amendments. They cannot escape this, and this Court should strike these amendments from the ballot in view of the intentional use of a catch-phrase title which the sponsors knew

should not have been used in the face of this Court's prior clear condemnation at p.1341 of Save Our Everglades I.

ARGUMENT

I.

THE FEE AMENDMENT IS ACTUALLY A TAX AND FAILS THE ANTI-LOGROLLING SINGLE SUBJECT TESTS AND THE STATUTORY TESTS

The Fee Amendment is as follows:

Title: Fee on Everglades Sugar Production

Summary: Provides that the South Florida Water Management District shall levy an Everglades Sugar Fee of 1¢ per pound on raw sugar as 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.

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.

Every New Political Idea Is Not Subject To Constitutional Revision Through The Citizens' Initiative Process

The Citizens' Initiative Process in its present form has been in existence since the 1972 constitutional revisions and perhaps no other single constitutional provision has resulted in greater consideration by this Court. The long line of decisions exemplified by Fine v. Firestone, 448 So. 2d 984 (Fla. 1984) and Weber v. Smathers, 338 So. 2d 819 (Fla. 1976), are well-known to this professional Save Our Everglades citizens group. In Advisory Opinion to the Attorney General--Limited Marine Net Fishing, 620 So. 2d 997, 1000 (Fla. 1993), this Court stated:

> The legal principles in the state constitution inherently command a higher status than any other legal rules in our society. By transcending time and changing political mores, the constitution is a document that provides stability in the law and society's consensus for general, fundamental values. Statutory law, on the other hand, provides a set of legal rules that are specific, easily amended and adaptable to the political, economic and social changes of our society.

The present proposed amendments are simply not properly considered by the voters in this fashion.

There are four avenues for constitutional revision in the Florida Constitution and the initiative process is by far the most limited, the most restricted and the most often rejected in every respect by the courts. The initiative process does not include a "filtering legislative process" and does not contemplate structured public debate or input as to the drafting, content or meaning of an initiative proposal. A court never has the benefit of regular

legislative history, Revision Commission history or a Constitutional Convention history for guidance in construing a new initiative amendment. For these and other reasons, this method of constitutional change is properly limited.

It must be recognized that not every new political idea or concept can be added to our Constitution through the Citizens' Initiative Process. The current three part package is just such an idea. In truth, it is not a single idea, but is instead a package of interrelated ideas and value judgments with "political fashionable" packaging.

The entire effort is misleading. The summaries and texts of the proposals are inconsistent with the advertising and publicity which the sponsors are using to sell the product to the petition-signers and eventual voters. Certain limitations on the initiative process are obvious. A fourth branch of government may not be created through the initiative process. A complex political idea which simply cannot be summarized in a single clear statement cannot be added by citizens' initiative. Different branches of government may not be transferred or combined through the initiative process. A basic right could not be added to or deleted from the Constitution by this process because such an amendment necessarily affects too many functions of government. If our Constitution had been written without the basic right to equal protection of the law, this unquestionably good concept simply could not be added through the initiative process.

Further, the initiative process is prohibited when the new initiative would change an existing right or requirement already contained in our Constitution unless the new proposal makes it very clear to the voters of this state that they will indeed be abolishing a existing constitutional requirement. The present proposals fail in this regard, and even if the present proposals had some good points, they simply are not susceptible to consideration and ballot placement due to the constitutional restrictions on this very limited process of changing our Constitution. In short, the Save Our Everglades idea was never the kind of idea which could be properly proposed as a citizens' initiative.

As this Court stated in the initial Save Our Everglades opinion of 1994: "This single-subject provision is a rule of restraint designed to insulate Florida's organic law from precipitous and cataclysmic change." In the very recent case In Re: Advisory Opinion to the Attorney General Re Tax Limitation, 673 So. 2d 864 (Fla. 1996), the Court stated: "When reviewing a proposed constitutional amendment for the ballot, we have noted that each proposed amendment is to be reviewed with 'extreme care, caution and restraint.' Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982)." Again, it is not every idea which can be added to our Constitution in the fashion chosen by the Save Our Everglades Committee. This Court has often used the word "precipitous" in its single subject opinions and it is worthwhile considering the dictionary definition. "Precipitate" is defined as "acting with excessive haste or impulse;

lacking due deliberation". "Precipitous" is defined as "abrupt and ill-considered". American Heritage Dictionary, 2nd Edition. These amendments are indeed precipitous and they should be stricken.

Single Subject Requirements:

In the 1994 Save Our Everglades Opinion, this Court struck the previous version of the sugar fee or 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 fatal defect of combining the goal of abating water pollution in the Everglades with the directive to fund the clean up through a fee or selective tax of "one cent per pound" assessed against each first processor of sugarcane grown in the Everglades Agricultural Area. This duality of purpose constitutes the same "logrolling" this Court condemned in the 1994 version of Save Our Everglades, 636 So. 2d at 1341.

Just as in the 1994 predecessor, the current sugar fee would perform the functions of multiple branches of government and therefore violates the single-subject rule and this Court's specific finding as to a functional restraint in the 1994 opinion. 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." Clearly it again "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. . .").

Also, like the 1994 version, the current initiative "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 pollution abatement, conservation and general protection of natural resources. How or why the innocent first-processor of sugar should be lumped in with the supposedly guilty first-processor is not dealt with in any way. The new tax assumes the guilt of all first-processors or alternatively taxes all without regard to fault.

Under the current sugar tax initiative, the South Florida Water Management District would also be required to perform the executive branch function of determining just who "each first processor, from sugarcane grown in the Everglades Agricultural Area" might be. Then the Water Management District must levy and collect the fee, but none of the three amendments actually say whether the penny per pound must, or even could, be deposited into the Everglades Trust Fund. Everyone assumes, based on the advertising campaign, that the penny per pound would go into the new Trust Fund, but the actual words used do not require it.

The proposal also "performs" a judicial function by imposing liability and assessing penalties on the sugarcane first processors in the "Everglades Agricultural Area." As this Court found in the 1994 Save Our Everglades decision, "[t]his provision renders a

judgment of wrongdoing and de facto liability and thus performs a quintessential judicial function." Again, a virtual fourth branch of government is created. Because the initiative "performs" functions of each branch of government, the single subject requirements of the Florida Constitution are violated and the public should not be called upon to vote on this again ill-considered effort.

In another decision, this Court also acted in 1994 to strike a proposed tax limitation amendment because 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 does this to an even greater extent. Instead of giving clear notice as to how the existing constitution would be affected, only vague hints of other possibly affected constitutional provisions are given. By imposing liability and assessing a penalty fee for clean up costs the initiative will bar the processors of sugar from access to the courts and trial by jury as 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 on the functions of multiple branches in violation of article II, § 3. The initiative does not come close to providing

adequate notice that it substantially affects numerous other Constitutional provisions and this defect alone means it must be stricken. Tax Limitation, 644 So. 2d at 491-494.

Title and Summary Requirements:

In the words of this Court, this amendment continues to fly "false colors" under the commonly used title of "Save Our Everglades". This was the intentional choice of the sponsors who could and should have totally abandoned this already judicially determined "misleading" title. The sponsors have now done indirectly what they were directly prohibited from doing in 1994. In fact, the everglades are already the subject of substantial preservation and conservation efforts by government and the sugar industry.

The Title is also misleading in its first word; "fee". No services will be given in return for the payment and plainly this is a tax--not a fee. This is just the sort of political rhetoric the Court criticized at page 1342 of Save Our Everglades I. Intentionally using "fee" instead of truthfully designating it as a "tax" is at best misleading and confusing. The Title uses "production" while the text imposes the tax on the "first processor". There are obvious distinctions and no voter could possibly know the difference. The description of the various geographic areas, Everglades Protection Area, Everglades Agricultural Area and South Florida Water Management District area, is confusing and inconsistent at best.

The "fee" which is legally a tax is also misleading to voters because they will not be advised that the new tax limitation of a super-majority (2/3) vote will also appear on the ballot under this Court's current opinion in Advisory Opinion to the Attorney General Re Tax Limitation, 673 So. 2d 864 (Fla. 1996). This limitation will directly apply to this sugar tax under this Court's opinion; see Overton, J. and Anstead, J., concurring. The sugar tax must be stricken as misleading and confusing.

II.

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

This proposed Trust Fund initiative amendment provides:

Title: Everglades Trust Fund

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 source, including gifts and state or federal funds.

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.[1]

(c) Funds deposited to the Everglades Trust Fund

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[1]Surprisingly, there is no requirement that the 1¢ per pound be actually "designated" by the Water Management District as some "other governmental entity". There is no meaning assigned to the "designation" of funds. The provision is intentionally vague.

> 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 of 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.

As already indicated, the 1996 Advisory Opinion on Tax Limitation, is only the most recent case which holds that a proposed amendment's substantial affects on other articles of the Constitution are crucial in determining single subject and clarity violations. The trust fund proposal directly, but silently, changes Article III, § 19(f) of the Constitution and its implementing legislation, Section 215.3207, Florida Statutes (1995). This 1992 constitutional provision (Article III, § 19) and the corresponding statute were recently considered by this Court in American Bankers Insurance Co. v. Chiles, 21 Fla. L. Weekly S267 (Fla. June 28, 1996) dealing with the constitutionality of the Florida Hurricane Catastrophe Trust Fund. Under Article III, § 19(f), as enacted pursuant to the recommendations of the Tax and Budget Reform Commission, 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. Pursuant to American Bankers, all details of the trust fund must be included in

the single bill creating the fund and all of these details must be subjected to the 3/5ths vote requirement. The 1992 constitutional revisions concerning trust fund creation were part of the general constitutional revisions to the entire budget and legislative oversight process which was adopted by the voters in 1992. The interrelationship between trust funds and legislative appropriations will now be dramatically affected by this new trust fund provision without the first word being said to the voters about the changes to these other aspects of the Constitution which were also recently amended. 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.

The Save Our Everglades sponsors were obviously aware of the recent amendments to Article III, § 19(f) because the Everglades Trust Fund was exempted from the 4 year limitation imposed on all other trust funds by that Article. However, the amendment does not state that the new trust fund is to be exempt from all of the other requirements of Article III, § 19(f).

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" obtain money from various sources with no requirement that any tax or fee dollars ever be deposited into the fund.

The Everglades Trust Fund--an "Empty Vessel".

The proposed Everglades Trust Fund has as its purpose: "to make funds available to assist" in conservation, natural resource protection and abatement of water pollution in the everglades. The South Florida Water Management District is to administer the fund and it "may receive funds from any source," including gifts, legislative appropriations, and any other funds so "designated" by the Legislature (state or federal) or "designated" by any "other governmental entity".

The "Everglades Trust Fund" initiative may well create an "empty vessel". See Fine v. Firestone, 448 So.2d 984 (Fla. 1984), Shaw, J., concurring specially. The language of the proposed amendment is so vague and indefinite that this fund may never receive any funding at all. Clearly, if no funds are required to be deposited in the fund, the fund's stated purpose is unachievable. Even if it was the intention of the drafters that the Fund be funded from the penny per pound revenues, both this amendment and the "Fee on Everglades Sugar Production" are so written that this would not happen without a court saying so in later litigation. Nowhere in the "Fee on Everglades Sugar Production" amendment is the "Everglades Trust Fund" mentioned. Likewise, the "Everglades Trust

Fund" amendment does not identify the penny per pound fee as one of its sources of funding. The Fund is an empty vessel because it is without substance and exists only on paper. However, the voters will expect more than this.

Notably, proposed section 17(b) does not simply say that the trust fund can accept funds from "any source". Instead, it contains a detailed list of sources from which funds may be received. Due to the list of the "allowed" sources, the proposed amendment leads the average voter to nothing but uncertainty.

Specifically, the trust can receive any other funds so designated "by any other governmental entities." At face value, this seems to authorize any governmental entity--whether executive, legislative or judicial and whether state, regional or local - to raise and appropriate money for the trust. While this type of activity may be appropriate for a legislative entity, these powers clearly cannot belong to executive and judicial branch governmental entities. Moreover, by assigning these powers to various branches and levels of government, the amendment affects multiple parts of the Florida Constitution in violation of the single subject rule. Any proposed constitutional amendment that upsets the delicate balance between branches and levels of government via a broad grant of power must certainly violate the single subject rule.

The proposed summary of the Fund amendment is defective for the same reason. A reasonable person reading the summary would never imagine that the proposed amendment could authorize local government

to impose a "trust fund" fee or tax. Nor would a reasonable person interpret the summary to authorize a court to "designate" part of a damage award or confiscated property to the trust fund. Under the text as written, both of these appear to be possible. The failure of the summary to disclose these possibilities renders it misleading and insufficient under the statute.

Of course, while the sponsors of the proposed amendment may argue that these powers are not included in the text of the amendment, the text of the proposed amendment does not support that argument. If these things are not possible, what does it mean for "any other governmental entity" to "designate" funds for the trust? If this question cannot be answered from a simple reading of the proposed text, the amendment must necessarily be too ambiguous to pass single subject muster and too uncertain to summarize in a fair and nonmisleading manner as required by the statute.

At best, the "Everglades Trust Fund" can only hope that the revenues from the "Fee on Everglades Sugar Production" will be deposited into the general revenue fund as required by Section 214.32, Florida Statutes and will then be appropriated to the Fund by the Legislature in the future on an annual basis. Unfortunately, the voter is not advised of the possibility that none of the penny per pound amounts collected may ever be used to "abate pollution." Obviously, the Florida Legislature always has the power to appropriate general revenue funds, after balancing the budget, to clean up the everglades. No constitutional amendment is necessary

to accomplish this end.

Payments By Polluters

Additionally, the Fault amendment of this trilogy does not require that the amounts, if any, recovered from "those who cause water pollution in the Everglades Agricultural Area or the Everglades Protection Area" to be deposited in the "Everglades Trust Fund." Except for stating that those who pollute "shall be primarily responsible for paying the costs of abatement of that pollution," the Fault amendment does not say to whom the at fault polluter is to pay the costs. Even if read together with the Trust Fund amendment, there is not even a hint that the costs of abatement exacted from a polluter will be paid into the "Everglades Trust Fund." If these amounts are not earmarked for the Everglades Trust Fund, these amounts will, as required by Section 214.32, Florida Statutes, be deposited in the general revenues of the State of Florida. Again, the voter is not clearly informed and is instead simply asked to assume that a Fund has in fact been created to remedy pollution and that the at fault polluter will pay into that Fund.

The advertising and media approach of the sponsors of this amendment tells the voter that the penny per pound will go into the trust fund. There is no indication as to how credit will be given for payments made under amendment (1) on a penny per pound and amendment (3) on the actual polluter paying for the cleanup. It is apparent that Save Our Everglades really hopes for double payments.

This unstated and illegal position should not be allowed and the proposal should be stricken.

III.

THE PROPOSED AMENDMENT ON FAULT AND PAYING COSTS OF WATER POLLUTION ABATEMENT FAILS THE CONSTITUTIONAL AND STATUTORY TESTS.

This Fault proposal states as follows:

Title: Responsibility for Paying Costs of Water Pollution Abatement in the Everglades

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.

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.

The Proposed Amendment Violates the Single Subject Rule.

The proposed amendment, like its sugar fee counterpart, violates the single subject rule by combining the judicial and executive functions of government into a single vague and ambiguous

provision. Determining the existence of an offending level of pollution and designating the responsible party or parties is clearly judicial. Again, the Save Our Everglades Committee has decided who is responsible for the water pollution and has engaged in "rendering a judgment of de facto liability." Save Our Everglades, 636 So. 2d at 1340.

Deciding who should be responsible for the overall problem of water pollution in this state is a classic legislative function as is the creation of a cause of action for such a wrong. The amendment's text has even combined liability for persons both within and without the geographic areas described in the amendments.

Indeed, the Fault amendment is also so vague that it too creates merely an "empty vessel" as was created in the Fund amendment. As stated by Justice Shaw in his concurring opinion to Fine v. Firestone, at 998:

> Second, an ineptly drawn initiative may not present the voters with an understandable proposition. Third, if adopted, the amendment or revision may present formidable difficulties to the three branches of government which have to obey it and may have to implement it. Such an "empty vessel," as the majority opinion recognizes, serves to transfer power to the judiciary, for example, which is directly contrary to the underlying purpose of citizen initiatives.

The Fault amendment may create a public or private cause of action, but no one will have the slightest idea until a court some day construes the actual text of the amendment. Frankly, we do not even now know what text would actually go into the Constitution. The proposal contains three paragraphs under the heading "Full Text of

the Proposed Amendment". The first paragraph and the third paragraph are inconsistent as to the geographic location of those who will be responsible for paying for pollution. Even the drafters have not figured out clearly what they want to accomplish. The two ideas of the drafters seem to be "those who cause water pollution within" and "those within who cause water pollution". These are simply not the same and the text of this amendment is uncertain.

The Amendment is Misleading and the Summary Defective

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 446 (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 placed on the ballot. Casino Authorization, 656 So. 2d at 469.

The text of the amendment would impose liability on all persons "who cause water pollution within the Everglades Agricultural Area or the Everglades Protection Area." The summary advises 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. . . ." Thus the summary suggests that liability attaches only to those persons who are actually in the Area. However, the proposed text (if this is really the text) imposes liability on anyone anywhere who causes water pollution in the Everglades.

This is a significant difference. The text would encompass non-Everglades Area farmers, fishermen, tourists, industries, developers, residents and governmental entities including the everglades municipalities "who cause water pollution within the Everglades Agricultural Area or the Everglades Protection Area." The failure of the summary lies in its inability to tell the voter the scope of the proposed amendment, and its plainly misleading summary of the actual amendment.

Save Our Everglades I spoke to the need for notice of the "chief purpose" of an amendment so the voter would be informed and not misled. 636 So. 2d at 1336. Nothing is more central to the notion of "Responsibility for Paying Costs" than a description of who is to be responsible. Because the summary so starkly conflicts with the uncertain text, the proposed amendment should be stricken from the ballot pursuant to the section 101.161 command that the

summary state its "chief purpose" in clear and unambiguous language.

IV.

INVALIDITY OF ALL THREE PROPOSALS AS A PACKAGE.

The Summaries from each proposal clearly show the interrelationship and the single package nature of the Save Our Everglades effort. These summaries state:

Summary: Provides that the South Florida Water Management District shall levy an Everglades Sugar Fee of 1¢ per pound on raw sugar as 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.

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 source, including gifts and state or federal funds.

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.

Frankly, the interdependency is obvious and the voters will be asked to sign petitions and vote on the entire package. All of the arguments accepted in Save Our Everglades I are thus equally applicable and require that these amendments be stricken. The summary from Save Our Everglades I could well serve as the summary for the current effort:

SUMMARY: Creates 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 citizen trustees will control the Trust.

In striking 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 the existing constitution or statutory law. Advisory Opinion to the Attorney General Re Tax Limitations, 655 So. 2d 486 (Fla. 1984).

The package of proposed amendments now in question 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. They further imply that there is no existing way to pay for cleaning up water pollution and that the trust fund is thus necessary.

Article II, § 7 of our Constitution provides 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 . . ." The Legislature has already 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)(9). 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. Nothing could be further from the truth. The Save Our Everglades apparently is not happy with the extensive current statutory program and wishes to overhaul it to its own liking.

The same deficiency led this Court to reject the tax limitation proposal in 1994 and the same result must again occur. All three proposed initiatives should be rejected as violating the Article XI, § 3, Florida Constitution, and section 101.161, Florida Statutes (1995).

CONCLUSION

For the reasons expressed, Florida Farm Bureau Federation opposes the three initiatives and requests they be stricken.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by Mail to: **Honorable Robert A. Butterworth**, Office of the Attorney General, State of Florida, PL-01, The Capitol, Tallahassee, Florida 32399-1050, **Jon Mills**, P.O. Box 117629, Gainesville, Florida 32611-7629, **Thom Rumberger**, Rumberger, Kirk & Caldwell, P.O. Box 1873, Orlando, Florida 32802-1873, **Honorable Sandra Mortham**, Secretary of State, The Capitol, Tallahassee, Florida 32399-0250, **Susan L. Turner**, Holland & Knight, P.O. Drawer 810, Tallahassee, Florida 32302-0810 and **Peggy M. Fisher**, Geller, Geller & Garfinkel, 1815 Griffin Road, Suite 403, Dania, Florida 33004-2252, this 23d day of July, 1996.

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