

IN THE  
SUPREME COURT OF FLORIDA  
CASE NO. 88,343

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IN RE:  
ADVISORY OPINION TO THE  
ATTORNEY GENERAL  
FEE ON EVERGLADES SUGAR PRODUCTION

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INITIAL BRIEF OF NATIONAL AUDUBON SOCIETY,  
FLORIDA AUDUBON SOCIETY, NATIONAL PARKS  
AND CONSERVATION ASSOCIATION, WORLD WILDLIFE  
FUND, AND CLEAN WATER ACTION

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IN SUPPORT OF THE FOLLOWING PROPOSED AMENDMENTS:  
"FEE ON EVERGLADES SUGAR PRODUCTION",  
"EVERGLADES TRUST FUND",  
AND "RESPONSIBILITY FOR PAYING COSTS OF WATER  
POLLUTION ABATEMENT IN THE EVERGLADES"

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STATEMENT OF THE CASE AND FACTS

The Florida Attorney General has requested an advisory opinion as to the validity of three separate amendments, entitled "Fee on Everglades Sugar Production," "Everglades Trust Fund," and "Responsibility for Paying Costs of Water Pollution Abatement in the Everglades." By letter dated June 27, 1996, the Attorney General requested this Court's opinion on whether the proposed amendments meet the standards of Article XI, Section 3 of the Florida Constitution and Section 101.161, Florida Statutes. The Court entered an order authorizing interested parties to file briefs on or before July 23, 1996, and setting oral argument for August 29, 1996. Additionally, in response to a Petition for Constitutional Writ, the Court ordered that case number CV-96-03841 (in the Circuit Court of Leon County) be transferred to this Court on July 18, 1996.

These interested parties are National Audubon Society, Florida Audubon Society, National Parks and Conservation Association, World Wildlife Fund, and Clean Water Action. For years they have actively participated in the preservation of Florida's natural resources in general and in the preservation and restoration of the Everglades in particular.

## SUMMARY OF ARGUMENT

The amendments proposed by the Save Our Everglades Committee meet constitutional and statutory requirements and should be approved for placement on the ballot. The amendments comply with Article XI, Section 3 of the Florida Constitution, in that they have only one subject. They also meet the ballot title and summary requirements of Section 101.161, Florida Statutes, in that they give voters enough information to make their decision. Further, the information is provided in a fair, accurate and neutral manner.

All the problems of the 1994 Save Our Everglades petition have been corrected in the 1996 petitions. See In re Advisory Opinion to the Attorney General - Save Our Everglades, 636 So. 2d 1336 (Fla. 1994). The 1996 initiative petitions comply with the single subject test because each petition affects only one branch of government and each contains only one issue. The new petitions also comply with the ballot title and summary requirements. The titles and summaries each state the chief purpose of their proposed amendments, give notice to the voter of the issue contained in the proposed amendment and do not mislead the voters in any fashion.

Environmental protection is a constitutional and statutory imperative in Florida. See Article II, Section 7; Article VII, Section 14, Florida Constitution; Section 373.4592, Florida Statutes. The proposed amendments logically and effectively implement those imperatives.

## ARGUMENT

### I. THE PROPOSED AMENDMENTS MEET CONSTITUTIONAL REQUIREMENTS AND SHOULD BE APPROVED FOR BALLOT PLACEMENT

Save Our Everglades Committee's proposed amendments satisfy all constitutional and statutory requirements, implement critically important state objectives and should be approved for placement on the ballot. To avoid duplication, these interested parties adopt and incorporate the Save Our Everglades Committee (SOE) briefs in full.

#### A. EACH AMENDMENT COVERS A SINGLE SUBJECT.

The proposed amendments fully comply with the single subject requirement of the Florida Constitution. Article XI, Section 3 of the Florida Constitution provides that citizens may amend their Constitution by initiative, but requires that any such amendment have only one subject.

The amendment entitled "Fee on Everglades Sugar Production" complies with Article XI, Section 3 because its sole subject is the authorization of a fee levy on sugar produced within the Everglades Agricultural Area. The amendment performs a single legislative function, namely the grant of fee-raising authority to the South Florida Water Management District. It has no impact on other provisions of the Constitution. The District already has taxing powers under Article VII, Section 9 of the Florida Constitution. The existing state policy with regard to the Everglades is adopted by the language of the initiative and the right of the legislature to continue to guide the development of this policy remains. There are no unforeseen, substantial impacts

on any level of Florida government. The initiative exhibits the "oneness of purpose" and internal coherence that characterizes compliance with the single subject requirements. Fine v. Firestone, 448 So. 2d 984, 990 (Fla. 1984).

The second petition, "Everglades Trust Fund," presents a single subject for the voters in compliance with Article XI, Section 3 because the amendment performs one function: the establishment of a trust fund. The initiative will have no impact on other provisions of the Florida Constitution. Already existing provisions provide for the conservation and protection of natural resources and the abatement of water pollution. See Article II, Section 7, Florida Constitution. There are no hidden collateral impacts underlying this amendment. It is limited to creating a trust fund to help fund the restoration activities in the Everglades. Finally, this petition has the requisite "oneness of purpose" and internal coherence that satisfy the requirements of the single subject test. Fine, 448 So. 2d at 990.

The amendment entitled "Responsibility for Paying Costs of Water Pollution Abatement in the Everglades" complies with Article XI, Section 3 because the sole subject is whether a polluter should be responsible for the abatement of that pollution. This single subject announces a well established principle of fairness to augment existing constitutional policy on pollution abatement. See Article II, Section 7, Florida Constitution. The proposed amendment will have no impact on other provisions of the Florida Constitution. The Florida Constitution currently provides

for the abatement of water pollution. This amendment only allows for an equitable apportionment of the financial burdens associated with the current policy. There are no hidden collateral impacts and the petition only applies within a given geographic area of major importance to the state. Finally, like the other two amendments, this amendment exhibits the "oneness of purpose" and internal coherence that characterizes compliance with the single subject requirement. Fine, 448 So. 2d at 990.

**B. EACH AMENDMENT MEETS THE BALLOT TITLE AND SUMMARY REQUIREMENTS.**

Each SOE petition complies with the ballot title and summary requirements as dictated by Section 101.161, Florida Statutes. Each title and summary ensures that "the electorate is advised of the true meaning and ramifications of an amendment." In re Advisory Opinion to the Attorney General re Tax Limitation, 644 So. 2d 486, 490 (Fla. 1994); Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982). All titles and summaries give voters enough information to make their decision. Further, the information is provided in a fair, accurate, and neutral manner without using emotion-laden language. Cf. In re Advisory Opinion to the Attorney General - Save Our Everglades, 636 So. 2d 1336, 1341 (Fla. 1994).

The amendment entitled "Fee on Everglades Sugar Production" complies with both technical and substantive requirements of Section 101.161, Florida Statutes. The title is neutrally informative without exhibiting inconsistency with the text. All necessary information about the fee is concisely addressed both in the summary and in the title. The initiative does not impose blame



or guilt on any person or industry, and it does not indulge in "political rhetoric" or "subjective evaluation of special impact." Save Our Everglades, 636 So. 2d at 1341-1342 (quoting Evans v. Firestone, 457 So. 2d 1351, 1355 (Fla. 1984) (Overton, J., concurring)).

The amendment entitled "Everglades Trust Fund" complies with both technical and substantive requirements of Section 101.161, Florida Statutes. The purpose of the Everglades Trust Fund is clear -- the establishment of a trust fund. The summary then supplies the additional required information of the purpose of this trust. The summary concisely explains that the trust fund will be administered by the South Florida Water Management District and that it may receive money from any possible funding source. Further, neither the summary nor title omit any necessary fact or any likely effect of this initiative so as to make it misleading to the voters. See Advisory Opinion to the Attorney General re Casino Authorization, Taxation and Regulation, 656 So. 2d 466, 469 (Fla. 1995); Askew, 421 So. 2d at 153-56; and Wadhams v. Board of County Com'rs of Sarasota County, 567 So. 2d 414, 416-17 (Fla. 1990). The consequences of this amendment are readily apparent to the voters and the text carefully avoids emotional language or promises beyond the actual scope of the amendment. Cf. Save Our Everglades, 636 So. 2d at 1341.

The amendment entitled "Responsibility for Paying Costs of Water Pollution Abatement in the Everglades" complies with technical and substantive requirements of Section 101.161, Florida

Statutes. The chief purpose and effect of the amendment is clear from the title alone. The summary further explains that the amendment will in no way change existing state policy with regard to environmental conservation, but will merely ensure that water polluters within the Everglades Agricultural Area and the Everglades Protection Area are "primarily responsible" for paying clean up and abatement costs. This amendment is not directed only at the sugar industry. It is clear from the language that all polluters in the Everglades will pay their fair share. Fingerpointing and political sloganeering are absent from the summary and text of this petition. The language is not misleading; rather, it is informative and non-argumentative as it explains how the amendment would alter existing state policy. Cf. Askew, 421 So. 2d at 156.

## II. 1996 INITIATIVES RESOLVE THE 1994 PROBLEMS

SOE's new initiatives correct all the problems from the 1994 petition. See In re Advisory Opinion to the Attorney General - Save Our Everglades, 636 So. 2d 1336 (Fla. 1994). Each petition affects only one branch of government and each contains only one issue. The titles and summaries state the chief purpose of their proposed amendments, give notice to the voter of the issue contained in the amendment, and avoid misleading voters.

Unlike the 1994 initiative petition, each petition meets the single subject test. The 1996 petitions do not alter or perform functions of multiple branches of government. Further, the three

separate petitions avoid "log rolling." There are not multiple issues in any one of the petitions.

In contrast to 1994, the 1996 initiatives comply with ballot title and summary requirements. First, the petitions are not misleading and language which suggests that the sugar industry will "help pay" for the cleanup of the Everglades is nonexistent. Cf. Save Our Everglades, 636 So. 2d at 1341. Second, the "political rhetoric" that the Supreme Court found in the 1994 initiative is absent in the current petitions. The language in the summary of the petition to impose a fee is neutral, leaving it to the electorate to come to its own conclusions about the wisdom of imposing the fee. Likewise, the summary of the petition regarding responsibility for payment does not mention specific polluters.

**III. ENVIRONMENTAL PROTECTION IS A CONSTITUTIONAL AND STATUTORY IMPERATIVE IN FLORIDA - THESE AMENDMENTS LOGICALLY AND EFFECTIVELY IMPLEMENT THESE IMPERATIVES**

These amendments carefully seek to implement one of Florida's most important objectives - the preservation and restoration of its natural resources. The Everglades stand out as Florida's most essential and unique natural resource.<sup>1</sup>

Florida has a long standing constitutional and statutory policy of preserving its environment and, more specifically, the

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<sup>1</sup>These parties recognize that this Court's review is limited to single subject and ballot title and summary compliance. However, these parties anticipate that the initiative opponents will trivialize the initiatives and suggest that they serve only to punish the sugar industry. To the contrary, the amendments attempt to deal with critical issues linked to Florida's environment and its people. Further, the amendments are not limited to the sugar industry and they act in concert with existing constitutional and statutory provisions.

Everglades. See Article II, Section 7; Article VII, Section 14, Florida Constitution; and Section 373.4592, Florida Statutes. The amendments, if approved, will serve as a vehicle to carry out these policies.

Article II, Section 7, of the Florida Constitution, lays out the fundamental state policy of preservation of natural resources and pollution abatement. Article II, Section 7, establishes:

It shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise.

This general provision in the Florida Constitution reveals the importance of conserving natural resources while it anticipates future provisions to abate pollution. The SOE petitions are exactly what the constitutional framers envisioned when they declared that "adequate provisions shall be made by law for the abatement of air and water pollution."

Article VII, Section 14 of the Florida Constitution, goes even further than Article II, Section 7, authorizing the full faith and credit of the state to issue bonds for pollution control. These petitions would act in concert with the necessary state bonds in furthering pollution abatement throughout the state. The amendments are logical steps in pursuit of this constitutional goal.

Florida has a specific and urgent public policy of preserving the Everglades. In the Everglades Forever Act, the legislature found that "the Everglades ecosystem is endangered as a result of

adverse changes in water quality, and in the quantity, distribution, and timing of flows, and, therefore, must be restored and protected." Section 373.4592(1)(a), Florida Statutes (1995). The Act also asserts that "[t]he waters flowing into the Everglades Protection Area contain excessive levels of phosphorous. A reduction in levels of phosphorus will benefit the ecology of the Everglades Protection Area." Section 373.4592(1)(d), Florida Statutes (1995). The Everglades region is essential to the continuity of growth and prosperity in Florida.

The Everglades is the largest wetlands system in North America and is now generally considered to be the most endangered ecosystem in North America. "The system is unique in the world and one of Florida's greatest treasures." Section 373.4592(1)(a), Florida Statutes (1995). Since the turn of the century, nearly half of the historic boundaries of the vast wetland ecosystem have been destroyed. The bird population of the Everglades has been reduced by 90%. Currently, fifteen species that reside in the Everglades are listed as endangered pursuant to the Endangered Species Act. See Secretary of the Interior, Volume 2: The Everglades, The Impact of Federal Programs on Wetlands, A Report to Congress (March 1994) at 123-142.

The report on wetlands and the Everglades generated by the Secretary of Interior for Congress in March of 1994 reveals alarming statistics and facts. The Everglades originally stretched about 100 miles from the southern end of Lake Okeechobee down to the tidal estuaries of the Gulf of Mexico and Florida Bay.

Estimates vary, but Everglades National Park preserves probably 15-20% of the original Everglades, and has been designated as a wetland of international importance under the Ramsar Convention. The water conservation areas contain about 37% of the original Everglades, though they are far from pristine. The report indicates that the Everglades is the largest single marsh system in the United States and serves to protect the Biscayne Aquifer which is the primary source of drinking water for the entire southeastern Florida coast from north of the Palm Beach area to Homestead. Id.

Originally, the Everglades contained over 2.3 million acres of wetlands at the turn of the century. About 1.1 million acres or 48% of the original acreage remained in the mid-1970s. Further, much of the remaining acreage is degraded. Approximately five acres of the Everglades Agricultural Area is degraded each day as the result of pollutant runoff which transforms native sawgrass to a monoculture of cattail that cannot support the native diversity of flora and fauna. The most serious threat to the Everglades is the intensity of sugar cane production in the Everglades Agricultural Area and the discharge of the polluted phosphorous-laden water from that area into the remaining portions of the Everglades. Id.

More than 30,000 acres of Everglades habitat have been destroyed by the sugar industry's pollution. Polluted farm runoff is also pumped into Lake Okeechobee where it has caused periodic serious algal blooms and other ecological problems. Further, the drainage required by sugar cane farms forces more than two-thirds

of the water which flowed historically from Lake Okeechobee south through the Everglades away from the "River of Grass" and into various rivers and canals. As a result, the once productive estuaries at the end of these water courses have suffered severe ecological damage due to the periodic release of these unnaturally large "slugs" of water. Correspondingly, the Everglades region receives, on the average, too little water. Down stream, Florida Bay suffocates beneath vast algal blooms thought by most scientists to be caused by a decrease in fresh water flowing through the Everglades to Florida Bay. Reductions in water flowing south through the Everglades also impact recharge of the Biscayne Aquifer, the sole source of drinking water for the four million people who inhabit the urban lower east coast of Florida. See National Audubon Society, Everglades System Restoration Campaign, The Everglades Ecosystem and South Florida Economy (July 10, 1995) at 9.

## CONCLUSION

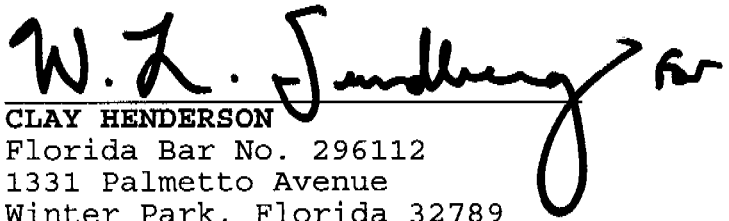
Roughly 800,000 registered voters have pledged their support to these particular petitions. Like the Florida Constitution, these petitions articulate a clear objective to protect natural resources and abate pollution. The Everglades is an essential natural resource that is the heart and soul of Florida. The proposed amendments help to carry out the constitutional mandate to conserve this natural resource and turn back the tide of pollution. For these reasons, and because the initiative fulfills all constitutional requirements, these parties ask this Court to issue its advisory opinion to the Attorney General that the proposed amendments fully comply with the requirements of Article XI, Section 3 of the Florida Constitution and with the requirements of Section 101.161, Florida Statutes.



REQUEST FOR ORAL ARGUMENT

National Audubon Society, Florida Audubon Society, National Parks and Conservation Association, World Wildlife Fund, and Clean Water Action, as interested parties, request oral argument in this proceeding.

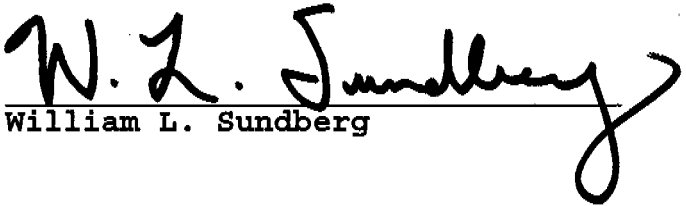
Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy has been furnished to **ROBERT BUTTERWORTH**, Office of the Attorney General, The Capitol, Plaza Level-01, Tallahassee, Florida 32399-1963, **WILLIAM B. KILLIAN**, Steel, Hector & Davis, 215 South Monroe Street, Suite 601, Tallahassee, Florida 32301; **HONORABLE SANDRA B. MORTHAM**, Secretary of State, The Capitol, Tallahassee, Florida 32301; **BRUCE ROGOW**, 2441 SW 28th Avenue, Ft. Lauderdale, Florida 33312-4554, by U.S. Mail, this 23rd day of July, 1996.

  
William L. Sundberg