

IN THE SUPREME COURT OF FLORIDA

Case Nos. 88,343; 88,344; 88,345

---

ADVISORY OPINION  
TO THE ATTORNEY GENERAL  
RE: FEE ON EVERGLADES SUGAR PRODUCTION (No. 88,343)

---

ADVISORY OPINION  
TO THE ATTORNEY GENERAL  
RE: EVERGLADES TRUST FUND (No. 88,344)

---

ADVISORY OPINION  
TO THE ATTORNEY GENERAL  
RE: RESPONSIBILITY FOR PAYING COSTS OF WATER  
POLLUTION ABATEMENT IN THE EVERGLADES (No. 88,345)

---

**INITIAL BRIEF OF INTERESTED PARTY  
FLORIDA CHAMBER OF COMMERCE, INC.,  
IN OPPOSITION TO THE PROPOSED INITIATIVES**

---

On Petitions for a Written Opinion of the Justices  
As to the Validity of Initiative Petitions

---

Wade L. Hopping  
Fla. Bar No. 637212  
David L. Powell  
Fla. Bar No. 656305  
Hopping Green Sams & Smith, P.A.  
123 South Calhoun Street  
Post Office Box 6526  
Tallahassee, Florida 32314  
(904) 222-7500

Attorneys for Interested Party  
Florida Chamber of Commerce, Inc.

## TABLE OF CONTENTS

TABLE OF CITATIONS . . . . .	iii
STATEMENT OF INTEREST . . . . .	1
STATEMENT OF THE CASE . . . . .	3
SUMMARY OF ARGUMENT . . . . .	5
I. The "Responsibility for Paying Costs of Water Pollution Abatement in the Everglades" initiative violates the single-subject rule and has a ballot summary which does not reveal the measure's chief purpose or legal effect. . . . .	7
A. The "Polluters Pay" initiative is an empty vessel with two conflicting subjects. These defects will result in the transfer of power from the people to the judicial branch. . . . .	10
B. The ballot summary for the "Polluters Pay" initiative is clearly and conclusively defective because it fails to disclose the measure's chief purpose and legal effect and creates a false impression about the initiative's substance. . . . .	13
II. The "Everglades Trust Fund" initiative confers powers from multiple branches of government, fails adequately to describe those powers, and does not address reasonably foreseeable issues. It also contains a defective ballot summary. . . . .	14
A. The "Everglades Trust Fund" initiative does not make clear the powers conferred by it and fails to answer reasonably foreseeable questions regarding the functions it would create and vest in the District. . . . .	15
B. The ballot summary for the "Everglades Trust Fund" initiative is clearly and conclusively defective because it fails to explain the executive and legislative powers it would grant. . . . .	19
III. The "Fee on Everglades Sugar Production" initiative is invalid because it fails to address essential implementation issues. The ballot summary misleads by calling the sugar tax a "fee." . . . . .	20
A. The "Fee on Everglades Sugar Production" initiative would not serve the purpose of making government more accountable because it would deceive voters and fails to address crucial implementation issues. . . . .	21
B. The ballot summary for "Fee on Everglades Sugar Production" is clearly and conclusively defective because it gives a false and misleading description to the charge it would impose. . . . .	22

IV. These three initiatives are a single proposal masquerading as separate measures. They violate constitutional and statutory norms which are intended to ensure that the people's power of initiative makes government more accountable. . . . . 23

CONCLUSION . . . . . 25

CERTIFICATE OF SERVICE

APPENDIX

## TABLE OF CITATIONS

### Judicial Decisions

<u>Advisory Opinion to the Attorney General--Limited Marine Net Fishing,</u> 620 So.2d 997 (Fla. 1993) . . . . .	24
<u>Advisory Opinion to the Attorney General re Tax Limitation,</u> 644 So.2d 486 (Fla. 1994) . . . . .	7, 23, 24
<u>Airboat Association of Florida, Inc. v. Florida Game and Fresh Water Fish Commission,</u> 498 So.2d 629 (Fla. 3d DCA 1986) . . . . .	17, 22-23
<u>Askew v. Firestone,</u> 421 So.2d 151 (Fla. 1982) . . . . .	10
<u>City of Daytona Beach Shores v. State,</u> 483 So.2d 405 (Fla. 1985) . . . . .	19
<u>Evans v. Firestone,</u> 457 So.2d 1351 (Fla. 1984) . . . . .	8, 12
<u>Fine v. Firestone,</u> 448 So.2d 984 (Fla. 1984) . . . . .	8, 9, 12, 13, 17, 18, 19
<u>Florida Department of Natural Resources v. Florida Game and Fresh Water Fish Commission,</u> 342 So.2d 495 (Fla. 1977) . . . . .	18
<u>In re Advisory Opinion to the Attorney General--Save Our Everglades,</u> 636 So.2d 1336 (Fla. 1994) . . . . .	2, 9, 13, 14, 16
<u>Metropolitan Dade County v. Golden Nugget Group,</u> 448 So.2d 515 (Fla. 3d DCA 1984), <u>aff'd,</u> 464 So.2d 535 (Fla. 1985) . . . . .	21
<u>Palm Beach County v. Town of Palm Beach,</u> 579 So.2d 719 (Fla. 1991) . . . . .	22
<u>Smith v. American Airlines, Inc.,</u> 606 So.2d 618 (Fla. 1992) . . . . .	10, 19
<u>State, Commission on Ethics v. Sullivan,</u> 449 So.2d 315 (Fla. 1st DCA), <u>rev. denied</u> 458 So.2d 271 (Fla. 1984) . . . . .	17
<u>State v. City of Port Orange,</u> 650 So.2d 1 (Fla. 1994) . . . . .	21

Thompson v. Graham,  
481 So.2d 1212 (Fla. 1985) . . . . . 16

Wadhams v. Board of County Commissioners,  
501 So.2d 120 (Fla. 2d DCA 1987) rev'd 567 So.2d 414 (Fla. 1990) . . . . . 13

Wadhams v. Board of County Commissioners, 567 So.2d 414 (Fla. 1990) . . . . . 23

Weber v. Smathers,  
338 So.2d 819 (Fla. 1976) . . . . . 7

**Florida Constitution**

Article I, section 1 . . . . . 7

Article II, section 7 . . . . . 12, 23

Article II, section 8 . . . . . 18, 19

Article II, section 8(h)(3) . . . . . 18

Article III, section 8(a) . . . . . 16

Article IV, section 9 . . . . . 17, 18

Article IV, section 10 . . . . . 3

Article XI, section 3 . . . . . 5, 7, 8, 10, 11, 14, 17, 20, 23, 25

**Statutes and Laws of Florida**

Ch. 75-22, §17. Laws of Florida . . . . . 18

Ch. 96-159, 1996 Fla. Sess. Law Serv. 113 (West) . . . . . 2

Ch. 96-320, 1996 Fla. Sess. Law Serv. 1070 (West) . . . . . 1

Ch. 96-339, §5, 1996 Fla. Sess. Law. Serv. . . . . 16

Section 15.21, Florida Statutes . . . . . 3

Section 16.061, Florida Statutes . . . . . 3, 6, 7

Section 20.03(11), Florida Statutes . . . . . 17

Section 101.161, Florida Statutes . . . . . 3, 9, 10, 14, 19, 20, 23

Section 101.161(1), Florida Statutes . . . . . 13

Section 120.52(1), Florida Statutes . . . . . 17

Section 120.52(1)(a), Florida Statutes . . . . . 17

Section 373.069(1)(e), Florida Statutes . . . . . 24

Section 373.4592, Florida Statutes . . . . . 24

Section 373.4592(2), Florida Statutes . . . . . 24

Section 373.536(5), Florida Statutes . . . . . 16

**Rules and Regulations**

Fla. Admin. Code Ann. r. 1S-2.009(1)(1996) . . . . . 3

**Other Sources**

Bridge Over Troubled Water: Recommendations of the Water Management  
District Review Commission (Dec. 1995) . . . . . 16

## STATEMENT OF INTEREST

The Florida Chamber of Commerce, Inc. (Chamber), is a corporation organized and existing under the laws of the State of Florida. The Chamber includes approximately 6,000 members, including numerous corporations, partnerships and other business entities that are regulated by and pay taxes to State, regional and local governments. The Chamber's mission is "to be the leader in the formulation and advocacy of sound public policy for Florida business."

Among the Chamber's specific concerns in carrying out its mission is to make State, regional and local government agencies accountable for their actions. The Chamber promotes governmental accountability in a number of ways.

- The Chamber and its subsidiary, Florida Chamber of Commerce Foundation, Inc., sponsor studies on ways to make Florida government more effective and responsive. Past studies include The Role of Privatization in Florida's Growth, a 1987 report which resulted this year in abolition of the Department of Commerce and the transfer of economic development programs to a public-private partnership called Enterprise Florida, Inc., see Ch. 96-320, 1996 Fla. Sess. Law Serv. 1070 (West); Crossroads: Designing Florida's Tax Structure, a 1990 study proposing reforms to Florida's tax structure to make the state more economically competitive in global markets; and No More Excuses: What Business Must Do to Help Improve Florida's Schools, a 1994 study aimed at making public schools more responsive to Florida's economic goals.

- Through its standing Governmental Reform Council, the Chamber promotes changes in statutory law to streamline regulatory programs and make them more responsive to policymakers

and the public. For example, the Chamber was a leading advocate for reform of the Administrative Procedure Act (APA) in order to make State agencies more accountable to the Legislature and the people. The reform effort resulted this year in enactment of Ch. 96-159, 1996 Fla. Sess. Law Serv. 113 (West), the most extensive revisions to the APA since 1974.

- Through its standing Taxation Council, the Chamber promotes predictable, stable, equitable and understandable taxing and spending policies. The Taxation Council studies Florida tax policy, formulates recommendations on improvements and advocates proposed changes to the Legislature, the Department of Revenue and other decisionmakers.

- The Chamber appears as amicus curiae in selected judicial proceedings which involve issues relating to the accountability of government. For example, the Chamber appeared as an interested party when this Court considered a previous initiative proposed by Save Our Everglades, Inc. In re Advisory Opinion to the Attorney General--Save Our Everglades, 636 So.2d 1336 (Fla. 1994).

In these and other ways, on behalf of its members and in the interest of the public at large, the Chamber has sought to make government accountable to the people. In response to the Court's Interlocutory Orders dated July 3, 1996, in Cases No. 88,343, No. 88,344 and No. 88,345, the Chamber declares its interest in the subject matter of this proceeding.



## STATEMENT OF THE CASE

On March 26, 1996, the Secretary of State approved the format for three initiatives sponsored by Save Our Everglades, Inc., a political committee doing business as the Save Our Everglades Committee. [A. 5]<sup>1</sup> They were "Responsibility for Paying Costs of Water Pollution Abatement in the Everglades" (Serial No. 96-01) [A. 6]; "Everglades Trust Fund" (Serial No. 96-02) [A. 7]; and "Fee on Everglades Sugar Production" (Serial No. 96-03). [A. 8]

On April 3, 1996, Save Our Everglades, Inc., submitted another form to the Division of Elections. [A. 10] This unified form appeared to include all three petitions, but with differences in the text and punctuation from the petitions approved by the Secretary of State on March 26, 1996. [A. 12-14] See Fla. Admin. Code Ann. r. 1S-2.009(1)(1996). The unified petition presented the three initiatives in the sequence in which they were approved by the Secretary of State.

On June 18, 1996, the Secretary of State submitted initiatives No. 96-01, No. 96-02 and No. 96-03 to the Attorney General pursuant to section 15.21, Florida Statutes, and represented that Save Our Everglades, Inc., had "successfully met the signature requirement" to request a written opinion of the Justices as to the validity of the three initiatives pursuant to Article IV, section 10 of the Constitution. [A. 15]

On June 27, 1996, the Attorney General filed three petitions with the Court pursuant to Article IV, section 10 and section 16.061, Florida Statutes, requesting a written opinion of the

---

<sup>1</sup> This brief includes an Appendix which sets forth certain pertinent documents from the official records of the Division of Elections and of this Court. References to the Appendix are denoted by brackets containing "A." followed by a page number.

Justices as to the validity of the initiatives sponsored by Save Our Everglades, Inc., and approved by the Secretary of State on March 26, 1996.

In one petition, the Attorney General states:

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 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.

Letter from Attorney General Robert A. Butterworth to The Honorable Gerald Kogan, Chief Justice, and the Justices of The Supreme Court, at 1-2 (June 27, 1996) (Case No. 88,343).  
[A. 15-16(e.s.)]

On July 3, 1996, this Court entered Interlocutory Orders in Cases No. 88,343, No. 88,344 and No. 88,345, requesting that interested parties file initial briefs with respect to the initiatives sponsored by Save Our Everglades, Inc., no later than July 23, 1996, with reply briefs due no later than August 13, 1996. The three proceedings were consolidated for purposes of oral argument, which was scheduled for August 29, 1996.

## SUMMARY OF ARGUMENT

**The initiative process was intended by the framers to make government accountable to the people. These initiatives would stand Article XI, section 3 on its head by making government less accountable. They should be declared invalid.**

The power of citizen initiative was included in the 1968 revision of the Florida Constitution to ensure that government is accountable and responsive to the people. To prevent abuse, the initiative provision was limited by a requirement that no initiative contain more than one subject. This Court has adopted various tests to enforce the single-subject requirement of Article XI, section 3. The principle which underlies all of these tests is that the initiative process exists to make government accountable, and it accomplishes that purpose when voters have one focused but complete proposition to consider. So, too, the ballot summary requirements of section 101.161, Florida Statutes, exist to ensure that the power of initiative is used to exert popular control over government. A properly drawn summary is necessary to empower the voters to assert that control.

Each of the three initiatives sponsored by Save Our Everglades, Inc., would negate the accountability principle. The "Responsibility for Paying Costs of Water Pollution Abatement in the Everglades" initiative is an empty vessel with two conflicting subjects. This Court ultimately would have to decide what this initiative really means, defeating the purpose of making government accountable to the people through Article XI, section 3. The ballot summary fails to disclose the chief purpose and legal effect of this initiative and creates a false impression about its content.

The "Everglades Trust Fund" initiative fails to adequately describe and delineate the powers which it would grant for carrying out the constitutionally created trust fund. This

initiative would grant to the South Florida Water Management District (District) both executive and legislative powers, with a corresponding diminution of the existing constitutional budgetary powers of the Legislature and Governor, without specifying that it would do so. Further, this initiative fails to address the foreseeable issue of who would have authority to choose a "successor agency" to the District for this constitutional function. The ballot summary masks these defects and fails to disclose legal consequences of the initiative that voters should know.

Finally, the "Fee on Everglades Sugar Production" initiative attempts to disguise its true nature by improperly labelling the charge it would authorize as a "fee" rather than a "tax." While authorizing the District to levy that tax, this initiative fails to specify who would collect the tax, a crucial accountability issue in any revenue-raising scheme. This initiative also fails to address who may choose a "successor agency" to the District. By describing the charge in the initiative as a fee, the summary violates section 101.161, Florida Statutes.

These three initiatives should be considered a single proposal because of their common substance. They employ the same definitions. Two of the three expressly rely upon a policy determination announced in the third. And two of the three designate the District as the vehicle to effectuate the design of Save Our Everglades, Inc. (Indeed, one of the most objectionable features of this scheme from the standpoint of accountability is that it would transfer power from elected officials, namely the Legislature and Governor, to appointees, namely, the District's governing board and this Court.) Taken together or singly, these initiatives violate constitutional and statutory norms which are intended to ensure that the people's power of initiative is used solely to make government accountable. For these reasons, they should be declared invalid.

## ARGUMENT

### I.

**The "Responsibility for Paying Costs of Water Pollution Abatement in the Everglades" initiative violates the single-subject rule and has a ballot summary which does not reveal the measure's chief purpose or legal effect.**

Once again the Supreme Court is called upon to review a change to the Florida Constitution proposed by Save Our Everglades, Inc. Again, Save Our Everglades, Inc., proposes constitutional changes which include the establishment of entities that would be all but independent of the historic checks and balances of the executive and legislative branches. Again, Save Our Everglades, Inc., has offered ballot summary language which conceals rather than informs. Again, this Court should declare the proposal of Save Our Everglades, Inc., invalid for violation of Article XI, section 3, and of section 101.161, Florida Statutes.

#### **Single-subject doctrine as a means to ensure accountability**

This Court's decisions on the power of initiative have evolved in marked ways since the first decision in 1976 interpreting the current version of Article XI, section 3. Compare Weber v. Smathers, 338 So.2d 819 (Fla. 1976) with Advisory Opinion to the Attorney General re Tax Limitation, 644 So.2d 486 (Fla. 1994). And yet one unifying theme runs through these cases: The initiative exists to make government accountable.

This principle led to the inclusion of Article XI, section 3 in the 1968 revision of the Florida Constitution. All political power is derived from the people and conferred by them on the State and its political subdivisions. Art. I, § 1, Fla. Const. Through Article XI, section 3, "the citizens of the state have retained the right to broaden or to restrict that power by initiative

amendment," Evans v. Firestone, 457 So.2d 1351, 1354 (Fla. 1984), to ensure that State, regional and local governments remain their servants.

Because the initiative is subject to abuse and does not have "a filtering legislative process," Fine v. Firestone, 448 So.2d 984, 988 (Fla. 1984), Article XI, section 3 includes the single-subject requirement. This requirement prevents constitutional mischief and ensures that the accountability principle is accomplished by delivering to voters a narrowly focused but complete proposition to consider and decide upon. To determine whether an initiative satisfies the single-subject requirement, this Court looks to different facets of an initiative. While the commentators have not remarked upon it, the common denominator for all these tests is the accountability principle, because it is at the heart of the initiative process.

■ **Significantly affecting existing provisions.** One test is whether an initiative identifies the articles or sections of the current Constitution which it would significantly affect. "This is necessary for the public to be able to comprehend the contemplated changes in the constitution and to avoid leaving to this Court the responsibility of interpreting the initiative proposal to determine what sections and articles are substantially affected." Fine, 448 So.2d at 989. If the voters do not fully understand the scope of the proposed change, or if the Court must later guess at the changes they intended to make, then the initiative process does not serve its purpose of making government responsive to the people.

■ **Empty vessel test.** Another test is whether an initiative is complete. An amendment which fails this test -- for example, by not addressing reasonably foreseeable issues -- would make government less accountable to the people. "Such an 'empty vessel' ... serves to transfer

power to the judiciary ... which is directly contrary to the underlying purpose of citizen initiatives." Fine, 448 So.2d at 998 (Shaw J., concurring).

■ **Altering more than one function of government.** Another test is an initiative's effect on the branches of government. "Although a proposal may affect several branches of government and still pass muster, no single proposal can substantially alter or perform the functions of multiple branches." In re Advisory Opinion to the Attorney General--Save Our Everglades, 636 So.2d 1336, 1340 (Fla. 1994) (e.o.) [hereinafter Save Our Everglades I]. Such an initiative would constitute logrolling and allow a provision which voters might not support if it were presented separately to become part of the Constitution, defeating the purpose of making government accountable.

These tests then are bottomed on the principle that government must be accountable, and the initiative process is a means to that end. They serve that purpose by ensuring ballot access for "an amendment [that] is specific and well-defined in its scope," Fine, 448 So.2d at 994 (McDonald, J. concurring), and screening out all the rest.

#### **The ballot summary as a means to ensure accountability**

The ballot summary requirements of section 101.161, Florida Statutes, are another means to ensure that the power of initiative is used to make government accountable. A ballot summary must be "an accurate and informative synopsis of the meaning and effect of the proposed amendment[,]" Save Our Everglades I, 636 So.2d at 1342, so each voter can determine whether she wishes for it to become a part of the Constitution. A properly drawn summary empowers the voter to assert control over government by ensuring that the voter knows what change will result from a "Yes" vote. A summary which misleads or omits material facts

necessary to understand the change being proposed is clearly and conclusively defective. Askew v. Firestone, 421 So.2d 151 (Fla. 1982). So is a summary which "tells the voter nothing about the actual change to be effected" by the proposal. Smith v. American Airlines, Inc., 606 So.2d 618, 620 (Fla. 1992). These rules also help to further the accountability principle.

With the accountability principle in mind, we turn to the initiatives proposed by Save Our Everglades, Inc.<sup>2</sup> Each should be declared invalid because, whether considered individually or together, they would violate the accountability principle.

**A. The "Polluters Pay" initiative is an empty vessel with two conflicting subjects. These defects will result in the transfer of power from the people to the judicial branch.**

The first initiative proposed by Save Our Everglades, Inc.,<sup>3</sup> is entitled "Responsibility for Paying Costs of Water Pollution Abatement in the Everglades" ("Polluters Pay"). [A. 3] The ballot summary for this initiative reads:

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.

[A. 6 (e.s.)]

---

<sup>2</sup> While other grounds exist for declaring these three initiatives invalid, due to the extensive briefing anticipated in these proceedings we will focus on the key accountability issues presented by these initiatives and violating Article XI, section 3 and section 101.161, Florida Statutes.

<sup>3</sup> With the Court's permission, in this brief we will not address the merits of the three initiatives in the order in which they are docketed. Rather, we will address them in the order in which they were approved by the Secretary of State and are disseminated to the public in Save Our Everglades, Inc.'s unified petition. [A. 12-14] That is the sequence which most reveals the context in which the sponsor has presented these "interrelated" measures. [A. 15]



The text of the "Polluters Pay" initiative reads:

(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.

[A. 6 (e.s.)]

"Polluters Pay" violates Article XI, section 3 in at least two ways which raise accountability concerns. First, "Polluters Pay" contains an internal inconsistency which results in it addressing two subjects. Subsection (a) provides a statement of intent "that those who cause water pollution within the Everglades Agricultural Area or the Everglades Protection Area" shall be primarily responsible for paying to abate it. The operative language in subsection (b), however, provides that "[t]hose 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 to abate that pollution. [A. 6 (e.s.)]

These conflicting provisions address clearly different subjects. The subject of subsection (a) is all pollution in the Everglades Protection Area or Everglades Agricultural Area, no matter its source. In contrast, the subject of subsection (b) is much narrower. Its scope is only that pollution in the Everglades Protection Area and Everglades Agricultural Area which originates

from within the Everglades Agricultural Area. Unaddressed by subsection (b) is all pollution in the Everglades Protection Area and Everglades Agricultural Area which originates from outside the Everglades Agricultural Area.

This internal inconsistency would confer upon the judicial branch the discretion to choose between subsection (a) or subsection (b) in determining the very subject of this initiative. Save Our Everglades, Inc., "want[s] to leave this important choice regarding the application of the proposal to the total discretion of this Court." Evans, 457 So.2d at 1356 (Overton, J., concurring). This the Court must not allow.

The second defect which raises accountability concerns is that "Polluters Pay" does not specify how this measure would be implemented. The declaration that certain polluters "shall be primarily responsible" for paying to abate pollution begs the question of precisely who those polluters are, and how and by whom they shall be held to account. Article II, section 7 currently provides that "adequate provision shall be made by law for the abatement of air and water pollution[,]" Art. II, § 7, Fla. Const. (e.s.), thus pinpointing responsibility on the Legislature. By contrast, it is not clear whether this initiative would add a new mandate to Article II, section 7 for legislators to implement and courts to enforce, or whether it would be precatory. Moreover, this initiative does not define "primarily." It does not make clear, for example, whether comparative fault principles would limit a specific polluter's financial responsibility to its specific share of the pollution to be abated.

In all these respects, the initiative is not complete. It is an empty vessel which would "transfer power to the judiciary ... which is directly contrary to the purpose of citizen initiatives." Fine, 448 So.2d at 998 (Shaw, J., concurring).

While the courts regularly must draw fine lines based on the necessarily general commands of the Constitution, this Court has rightly held that the initiative process will not make government more accountable to the people if an initiative confers vast discretion on the Court to decide the measure's central meaning. Fine, 448 So.2d at 989. Because "Polluters Pay" would confer that discretion on the Court, it should be declared invalid.

**B. The ballot summary for the "Polluters Pay" initiative is clearly and conclusively defective because it fails to disclose the measure's chief purpose and legal effect and creates a false impression about the initiative's substance.**

The 54-word ballot summary for "Polluters Pay" raises concerns regarding accountability. It does not heed the statute's command to explain the initiative. § 101.161(1), Fla. Stat. (1995). It does not, even in generalities, "tell the voter the legal effect of the amendment[.]" Evans, 457 So.2d at 1355 (e.s.). It does no more than mirror language in the initiative, providing "no explanatory statement whatsoever." Wadhams v. Board of County Commissioners, 501 So.2d 120, 124 (Fla. 2d DCA 1987) (Grimes, J., dissenting), rev'd 567 So.2d 414 (Fla. 1990).

Further, this initiative suffers from the same defect as the prior submission by Save Our Everglades, Inc. The ballot summary for the prior initiative created a false impression that it would identify a variety of entities to finance Everglades restoration. Save Our Everglades I, 636 So.2d at 1341. Here, the summary for "Polluters Pay" avers that, if voters approve the measure, those in the Everglades Agricultural Area who cause pollution in the Everglades Protection Area or Everglades Agricultural Area will be "primarily responsible" for paying to abate that pollution. [A. 6(e.s.)]

If someone is to be held "primarily" responsible, it follows that others also will be held responsible. This ballot summary thus "gives the reader the impression that entities other than

the sugarcane industry will be sharing the expense of the cleanup. And yet nothing in the text of the proposed amendment indicates that this would be the case." Save Our Everglades I, 636 So.2d at 1341. By misleading the voters, this ballot summary deprives them of the ability to make government responsive to their will.

For these reasons, "Polluters Pay" fails the tests intended to ensure that an initiative promotes accountable and responsive government. This initiative should be declared invalid pursuant to Article XI, section 3 and section 101.161, Florida Statutes.

## II.

**The "Everglades Trust Fund" initiative confers powers from multiple branches of government, fails adequately to describe those powers, and does not address reasonably foreseeable issues. It also contains a defective ballot summary.**

The second initiative proposed by Save Our Everglades, Inc., is entitled "Everglades Trust Fund." [A. 7] The ballot summary for this initiative reads:

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.

[A. 7 (e.s.)]

The text of "Everglades Trust Fund" reads:

(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.

[A. 7 (e.s.)]

**A. The "Everglades Trust Fund" initiative does not make clear the powers conferred by it and fails to answer reasonably foreseeable questions regarding the functions it would create and vest in the District.**

The "Everglades Trust Fund" initiative violates the single-subject requirement in at least two ways that implicate the accountability concerns of this Court's teachings. First, this initiative fails adequately to describe the powers which it confers upon the District. Subsection (a) confers the executive power to "administer" the trust fund "consistent with statutory law." Subsection (c) confers the power to "expend" moneys from the trust fund for certain pollution abatement purposes, but in vivid contrast with subsection (a), this latter provision does not

require that those expenditures be "consistent with statutory law" -- or any other law enacted by the Legislature, such as the General Appropriations Act. In this way subsection (c) confers both the legislative power to appropriate moneys from the trust fund, and the executive power to spend those moneys, on the District. Save Our Everglades I, 636 So.2d at 1340.

This scheme would significantly alter the Legislature's appropriations power under Article VII, section 1(c) and the Governor's line-item veto power under Article III, section 8(a) without reference to either of those sections in the initiative. It would vest in the District's appointed governing board the sole authority to spend moneys from the trust fund without approval by elected officials of the executive or legislative branches, circumventing the historic checks and balances.<sup>4</sup> "The governor's veto power is balanced against the legislature's power." Thompson v. Graham, 481 So.2d 1212, 1215 (Fla. 1985). This proposal would disturb that balance -- indeed, eliminate it for certain expenditures -- without notifying the voters in advance of that consequence.

These failures in "Everglades Trust Fund" are significant. One important question raised by this initiative is whether the District would be subject to the APA when exercising its constitutional duties in administering the trust fund. Another is the proper avenue for judicial review of the District's actions in carrying out these constitutional functions. The answers to these questions are crucial for ensuring that the District is accountable. Certainly, these

---

<sup>4</sup> Only this year, the Legislature gave the Governor statutory veto authority over water management district budgets as a new accountability measure. Ch. 96-339, § 5, 1996 Fla. Sess. Law Serv., at 1386 (West) (to be codified at § 373.536(5), Fla. Stat.). See also Water Management District Review Commission, Bridge Over Troubled Water: Recommendations of the Water Management District Review Commission (Dec. 1995), at 4 ("districts' accountability could be strengthened through enhanced oversight by both executive and legislative representatives").

questions are foreseeable. See Airboat Ass'n of Florida, Inc. v. Florida Game and Fresh Water Fish Comm'n, 498 So.2d 629 (Fla. 3d DCA 1986) (game commission rule "tantamount to a legislative act" and therefore not subject to APA or direct appeal); State, Commission on Ethics v. Sullivan, 449 So.2d 315 (Fla. 1st DCA), rev. denied 458 So.2d 271 (Fla. 1984) (holding APA applies to ethics commission proceedings). And yet the initiative does not delineate its grant of power well enough to provide answers.<sup>5</sup>

The second major defect of this initiative is that it does not make clear who would choose the District's "successor agency" for purposes of carrying out these constitutional functions. The sponsor of "Everglades Trust Fund" implicitly acknowledges that these functions may be vested elsewhere by authorizing their transfer to a "successor agency."<sup>6</sup> The initiative is materially deficient, however, in failing to specify who is empowered to move that function from the District -- the Legislature, the District, both or neither.

---

<sup>5</sup> By comparison, Article IV, section 9 specifies that it confers the "regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life[.]" It describes the nature of the powers conferred, the entity vested with those powers, and a description of the object for the exercise of those powers, subject to specific exceptions. Art. IV, § 9, Fla. Const. While a grant as expansive as this one would not be possible by initiative under the single-subject requirement of Article XI, section 3, this provision nevertheless offers a useful benchmark for the proper means of making grants. "Everglades Trust Fund" does not measure up to this standard for clarity and precision in "the basic document that controls our governmental functions." Fine, 448 So.2d at 989.

<sup>6</sup> The word "agency" seems to preclude a transfer of these functions from the appointees on the District's governing board to the elected members of the Legislature. §§ 20.03(11), 120.52(1), Fla. Stat. (1995). Under one of these definitions, the Governor would be considered an "agency" -- but only to the extent that he exercised executive powers. Id. § 120.52(1)(a). If the Governor were made to fit within this definition of "agency," he would appear to be authorized to administer the trust fund but not to appropriate moneys from it.

It is reasonably foreseeable that this question will arise and require an answer. In 1975, the Legislature authorized an executive department to "directly supervise, review, and approve" the budgeting decisions by the Game and Fresh Water Fish Commission (Game Commission). Ch. 75-22, § 17, at 52, Laws of Fla. In the ensuing litigation between the two agencies, this Court relied upon the specific commands of Article IV, section 9 in holding that the Legislature's attempt to exert additional control over the Game Commission was "an impermissibly broad intrusion" upon the authority granted to the Game Commission in Article IV, section 9. Florida Department of Natural Resources v. Florida Game and Fresh Water Fish Commission, 342 So.2d 495, 497 (Fla. 1977). Such a conflict can easily be foreseen here from a legislature which vigilantly guards its power of the purse. In the absence of an express authorization in the initiative itself, the question will arise as to whom may name a "successor agency" for these constitutional functions. That Save Our Everglades, Inc., left this question unanswered in this initiative is ample grounds for its invalidation. Fine, 448 So.2d at 989.

The task of specifying who would choose a "successor agency" and how it would be done is not impossible to perform. Twenty years ago, Governor Askew confronted the same issue when he drafted the "Sunshine Amendment" initiative, now Article II, section 8. Like "Everglades Trust Fund," the Sunshine Amendment created constitutional functions, in that case relating to ethics and financial disclosure. Art. II, § 8, Fla. Const. It lodged those functions in a specific existing agency, the Florida Commission on Ethics. Id. art. II, § 8(h)(3). And it contemplated that those functions would be moved one day. Unlike "Everglades Trust Fund," the Sunshine Amendment authorized the Legislature to transfer those functions "by law." Id.



art. II, § 8(h). Thus did the Sunshine Amendment ensure accountability by providing a clear means for the transfer of its constitutional functions.

The same cannot be said for "Everglades Trust Fund." It begs the question of who will choose a "successor agency"; no doubt the urgency and controversy attending that question will bear a direct relationship to the amount of money in the trust fund. As the amount increases, it will become ripe for the very sort of "government-versus-government" legal dispute which this Court has branded contrary to the public interest. E.g., City of Daytona Beach Shores v. State, 483 So.2d 405, 407 (Fla. 1985). This Court should prevent such a conflict by declaring "Everglades Trust Fund" invalid because it is incomplete for failing to address reasonably foreseeable issues that the judicial branch otherwise must decide without a basis for doing so. Fine, 448 So.2d at 989.

**B. The ballot summary for the "Everglades Trust Fund" initiative is clearly and conclusively defective because it fails to explain the executive and legislative powers it would grant.**

The 49-word ballot summary for "Everglades Trust Fund" fails to satisfy the requirements of section 101.161, Florida Statutes, because it does not explain that it would confer vast executive and legislative powers on the District. Nor does it explain how that grant would diminish the existing powers of the Legislature and the Governor. It "tells the voter nothing about the actual change to be effected[.]" Smith, 606 So.2d at 620. Further, it discloses that the trust fund would be "administered by" the District but fails to disclose that the District would also be empowered to appropriate and "expend" moneys from the trust fund.

For these reasons, "Everglades Trust Fund" fails the tests intended to ensure that an initiative results in accountable and responsive government. This initiative should be declared invalid pursuant to Article XI, section 3 and section 101.161, Florida Statutes.

### III.

**The "Fee on Everglades Sugar Production" initiative is invalid because it fails to address essential implementation issues. The ballot summary misleads by calling the sugar tax a "fee."**

The third initiative sponsored by Save Our Everglades, Inc., is entitled "Fee on Everglades Sugar Production." [A. 8] The ballot summary for this initiative reads:

Provides that the South Florida Water Management District shall levy an Everglades Sugar Fee of 1¢ 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.

[A. 8 (e.s.)]

The text of "Fee on Everglades Sugar Production" reads:

(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.

[A. 8 (e.s.)]

**A. The "Fee on Everglades Sugar Production" initiative does not serve the purpose of making government more accountable because it would deceive voters and fails to address crucial implementation issues.**

"Fee on Everglades Sugar Production" suffers from at least three defects that frustrate the purpose of making government accountable through the initiative process.

First, this initiative disguises its true effect by labelling the charge it would authorize as a "fee" rather than a "tax." This Court has explained in some detail the distinction between a fee and a tax, State v. City of Port Orange, 650 So.2d 1, 3-4 (Fla. 1994), and it is obvious that the charge imposed here has none of the attributes of a fee and all the attributes of a tax. Word games with such a transparent purpose would corrupt the initiative process. They would lull the voters into approving a measure they might not approve if this charge were called by its real name. The use of the term fee is unfair and misleading.

Second, the initiative omits important details regarding collection of the tax. Florida law distinguishes between the entity which levys a tax and the entity which collects it. Metropolitan Dade County v. Golden Nugget Group, 448 So.2d 515 (Fla. 3d DCA 1984), aff'd, 464 So.2d 535 (Fla. 1985). This initiative specifies that the District will "levy" the tax, but it does not specify who will collect it, thus failing to address a critical element of this revenue-raising

measure. Nor does it make clear who will decide who will collect the tax and how it will be done. This measure would leave this duty up to the District, the Legislature or someone else, but it does not specify who. That this initiative fails to provide accountability for these public funds is alone an adequate basis for invalidation, because the initiative is not complete.

Third, "Fee on Everglade Sugar Production" provides that the powers granted to the District may be transferred to a "successor agency," but it does not specify who is empowered to carry out the transfer and how a transfer is to be accomplished. It suffers from the same defect as "Everglades Trust Fund." See supra at 17-19. Where "Everglades Trust Fund" gives the District powers over a trust fund without a funding source, the "Fee on Everglades Sugar Production" establishes a revenue source for the District or its "successor agency" in Everglades restoration. As a money-producing tax, "Fee on Everglades Sugar Production" creates a far more likely prospect of a dispute between governmental bodies -- and thus litigation in which "the losers are the taxpayers[,]" Palm Beach County v. Town of Palm Beach, 579 So.2d 719, 721 (Fla. 1991) (Overton, J., dissenting) -- than a trust fund which may never have a penny. Such a dispute should be avoided by invalidating "Fee on Everglades Sugar Production" for not being complete, due to its failure to address vital and foreseeable issues.

**B. The ballot summary for "Fee on Everglades Sugar Production" is clearly and conclusively defective because it gives a false and misleading description to the charge it would impose.**

The ballot summary of "Fee on Everglades Sugar Production" is true to the initiative text by calling the charge it would impose a "fee" [A. 8], but this reliance upon a misleading euphemism conceals more than it explains about the sugar tax which this initiative would impose. "A proposed amendment cannot fly under false colors; this one does." Askew, 421

So.2d at 156. It should be stricken for attempting to subvert a process intended to make government responsive. "Deception of the voting public is intolerable and should not be countenanced." Wadhams v. Board of County Commissioners, 567 So.2d 414, 418 (Fla. 1990).

For these reasons, "Fee on Everglades Sugar Production" fails the tests intended to ensure that an initiative makes government accountable and responsive. This initiative should be declared invalid pursuant to Article XI, section 3 and section 101.161, Florida Statutes.

#### IV.

**These three initiatives are a single proposal masquerading as separate measures. They violate constitutional and statutory norms which are intended to ensure that the people's power of initiative makes government more accountable.**

The Chamber respectfully submits that these initiatives are intentionally and inextricably linked together. They have the same sort of "consolidated format" which has been before this Court before, Advisory Opinion to the Attorney General re Tax Limitation, 644 So.2d 486, 489 (Fla. 1994) [hereinafter Tax Limitation I], but these beguiling proposals do much more. They are connected in substance in several ways which compel this Court to consider them together.

- **Common policy.** The "Polluters Pay" initiative would amend Article II, section 7, and the other two initiatives cite that section of the Constitution as the policy basis for their respective provisions.

- **Common definitions.** All three adopt the statutory definitions of the Everglades Protection Area and Everglades Agricultural Area as set forth in the Everglades Forever Act

enacted by the Legislature in 1994.<sup>7</sup> See § 373.4592(2), Fla. Stat. (1995). Two of the three, "Fee on Everglades Sugar Production" and "Everglades Trust Fund," adopt the statutory definition of the District. See id. § 373.069(1)(e).

■ **Reliance on the District.** Two of the initiatives, "Everglades Trust Fund" and "Fee on Everglades Sugar Production," grant powers to the District as the vehicle to implement these constitutional measures until someone selects a "successor agency."<sup>8</sup>

The design of Save Our Everglades, Inc., is all too apparent. It invites the mind to connect the three initiatives, so the Attorney General can be forgiven for accepting the invitation. He inadvertently described one of these initiatives as incorporating the features of two of them. In his petition on "Fee on Everglades Sugar Production," the Attorney General avers:

The present initiative, while authorizing the imposition of a fee on sugar production in the Everglades, limits the use of the fund for conservation and protection of the natural resources and abatement of water pollution within the Everglades, and requires that the fund be administered by a special district consistent with statutory law.

Letter from Attorney General Robert A. Butterworth to The Honorable Gerald Kogan, Chief Justice, and the Justices of The Supreme Court, at 5 (June 27, 1996) (Case No. 88,343) [A. 19 (e.s.)].

---

<sup>7</sup> The Everglades Forever Act provided a restoration program for the Everglades financed by an agricultural privilege tax. § 373.4592, Fla. Stat. (1995). Thus, these initiatives address matters most appropriate for statutory law which is "adaptable to the political, economic, and social changes of our society." Advisory Opinion to the Attorney General--Limited Marine Net Fishing, 620 So.2d 997, 1000 (Fla. 1993) (McDonald, J., concurring).

<sup>8</sup> This feature points up one of the more objectionable aspects of these initiatives from the standpoint of accountability. Either singly or together, they would transfer power from elected officials (the Legislature and Governor) to appointees (the District's governing board and this Court) without identifying that transfer of power for the voters. By doing so, they are contrary to both law and the accountability principle. Tax Limitation I, 644 So.2d at 494.

Of course, no single initiative of these three incorporates both of these features. "Fee on Everglades Sugar Production" imposes a tax. [A. 5] "Everglades Trust Fund" creates a trust fund to be "administered by" the District with the fund's contents -- wherever they may come from -- earmarked for pollution abatement in the Everglades Protection Area and Everglades Agricultural Area. [A. 4] But neither initiative on its face would perform both functions. Thus has the Attorney General acknowledged again that these ostensibly separate but "interrelated" initiatives are in reality all of a piece.

Having designed the three measures as parts of a whole, Save Our Everglades, Inc., should not be heard to argue that they must be treated separately here. They are one. The Court should not elevate form over substance; it should not permit the violation of constitutional and statutory norms by circumvention. All the available facts demonstrate that the three initiatives sponsored by Save Our Everglades, Inc., are a single plan with the same defects as its 1994 proposal. The form is an artifice to avoid the mandate of Article XI, section 3, ensuring that the initiative process makes government accountable to the people. For these reasons, the initiatives should be treated as one and be declared invalid.

### CONCLUSION

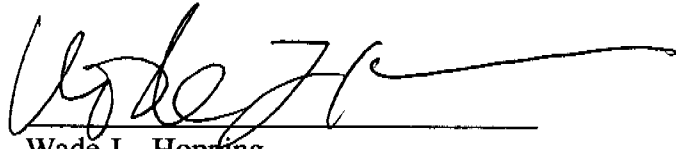
For the foregoing reasons of law and policy, the Chamber respectfully requests that the Justices render a written opinion which determines that the initiatives presented in Cases No. 88,343, No. 88,344 and No. 88,345:

(a) Violate the single-subject requirement of Article XI, section 3, whether considered separately or together;

- (b) Contain ballot summaries which are clearly and conclusively defective; and
- (c) Are therefore invalid and unsuitable for further circulation as proposed constitutional amendments.

Respectfully submitted this 23d day of July, 1996.

Hopping Green Sams & Smith, P.A.



Wade L. Hopping  
Fla. Bar No. 637212  
David L. Powell  
Fla. Bar No. 656305  
123 South Calhoun Street  
Post Office Box 6526  
Tallahassee, Florida 32314  
(904) 222-7500

Attorneys for Interested Party  
Florida Chamber of Commerce, Inc.

80210.02



Certificate of Service

I hereby certify that a copy of the Initial Brief of Interested Party Florida Chamber of Commerce, Inc., in Opposition to the Proposed Initiatives and accompanying appendix was furnished by prepaid United States mail on this 23d day of July, 1996, to:

The Hon. Robert A. Butterworth  
Attorney General  
The Capitol  
Tallahassee, FL 32399

Michael L. Rosen  
Florida Legal Foundation  
315 S. Calhoun St., Suite 502  
Tallahassee, FL 32301

The Hon. Sandra Mortham  
Secretary of State  
The Capitol  
Tallahassee, FL 32399

Howard I. Weiss  
Weiss & Handler  
2255 Glades Rd., Suite 218-A  
Boca Raton, FL 33431-7391

Jon Mills  
Post Office Box 117629  
Gainesville, FL 32611-7629

Kenneth W. Sukhia  
Fowler, White, Gillen, Boggs,  
Villareal & Banker, P.A.  
101 N. Monroe St., Suite 1090  
Tallahassee, FL 32301-1547

Thom Rumberger  
Rumberger, Kirk & Caldwell  
Post Office Box 1873  
Orlando, FL 32802-1873

John R. Beranek  
Ausley & McMullen  
Post Office Box 391  
Tallahassee, FL 32302


William B. Killian  
Donald B. Middlebrooks  
Steel Hector & Davis, LLP  
1900 Phillips Point West  
777 South Flager Drive  
West Palm Beach, FL 33401

William L. Hyde  
Gunster, Yoakley, Valdes-Fauli  
& Stewart, P.A.  
515 N. Adams St.  
Tallahassee, FL 32301

Bruce S. Rogow  
Beverly A. Pohl  
100 N.E. 3rd Avenue  
Suite 900  
Ft. Lauderdale, FL 33301

Steven A. Geller  
Peggy M. Fisher  
Geller, Geller & Garfinkel  
1815 Griffin Rd., Suite 403  
Dania, FL 33004-2252

Chesterfield H. Smith  
Susan L. Turner  
Holland & Knight  
Post Office Box 810  
Tallahassee, FL 32302

  
Attorney

# APPENDIX

## TABLE OF CONTENTS

Letter from Secretary of State Sandra Mortham to Attorney General Robert A. Butterworth (June 18, 1996) . . . . .	A. 3
Letter from David A. Rancourt, Director, Division of Elections, to Thom Rumberger, General Counsel, Save Our Everglades Committee (Mar. 26, 1996) . . . . .	A. 5
"Responsibility for Paying Costs of Water Pollution Abatement in the Everglades," Initiative No. 96-01 (Case No. 88,345) . . . . .	A. 6
"Everglades Trust Fund," Initiative No. 96-02 (Case No. 88,344) . . . . .	A. 7
"Fee on Everglades Sugar Production," Initiative No. 96-03 (Case No. 88,343) . . . . .	A. 8
Letter from Richard A. Keller, Rumberger, Kirk and Caldwell, P.A., to Paula Reams, Division of Elections (Apr. 3, 1996) . . . . .	A. 10
Single Form Unified Petition . . . . .	A. 12
Letter from Attorney General Robert A. Butterworth to The Honorable Gerald Kogan, Chief Justice, and the Justices of The Supreme Court (June 27, 1996) (Case No. 88,343) . . . . .	A. 15

# State of Florida



## Department of State

### Division of Elections

I, Sandra B. Mortham, Secretary of State of the State of Florida, do hereby certify that the attached is a true and correct copy of the letter to Attorney General Bob Butterworth dated June 18, 1996, as shown by the records of this office.

Given under my hand and the  
Great Seal of the State of Florida,  
at Tallahassee, the Capital, this the  
23rd day of July 1996



*Sandra B. Mortham*

Sandra B. Mortham  
Secretary of State



FLORIDA DEPARTMENT OF STATE  
Sandra B. Mortham  
Secretary of State

18 June 1996

The Honorable Bob Butterworth  
Attorney General  
State of Florida  
The Capitol  
Tallahassee, Florida 32399-1050

Dear Attorney General Butterworth,

Re: **Save Our Everglades Committee**

- a) Responsibility for Paying Costs of Water Pollution Abatement in the Everglades (Serial No. 96-01)
- b) Everglades Trust Fund (Serial No. 96-02)
- c) Fee on Everglades Sugar Production (Serial No. 96-03)

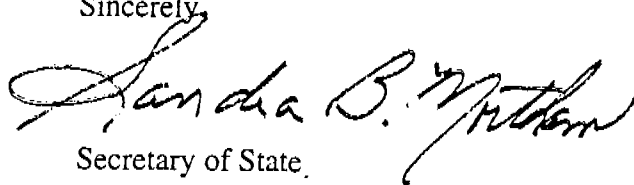
Section 15.21, Florida Statutes, provides that the Secretary of State shall submit to the Attorney General an initiative petition when a political committee has obtained ten percent of the signatures in one fourth of the Congressional Districts as required by Article XI of the Florida Constitution.

Section 16.061, Florida Statutes, provides that the Attorney General must then petition the Supreme Court for an advisory opinion regarding the compliance of the text of the proposed amendment, ballot title and substance of the amendment to the State Constitution.

The Honorable Bob Butterworth  
18 June 1996  
Page Two

Save Our Everglades Committee, the above-referenced political committee, has successfully met the signature requirement, and I am, therefore, submitting its proposed constitutional amendments, ballot titles and substance of the amendments.

Sincerely,

  
Secretary of State.

SBM/dpr

Enclosures

cc: Mr. Thom Rumberger  
Mr. Bill Sundberg

DIVISIONS OF FLORIDA DEPARTMENT OF STATE  
Office of the Secretary  
Division of Administrative Services  
Division of Corporations  
Division of Cultural Affairs  
Division of Elections  
Division of Historical Resources  
Division of Library and Information Services  
Division of Licensing

MEMBER OF THE FLORIDA CABINET



HISTORIC PRESERVATION BOARDS  
Historic Florida Keys Preservation Board  
Historic Palm Beach County Preservation Board  
Historic Pensacola Preservation Board  
Historic St. Augustine Preservation Board  
Historic Tallahassee Preservation Board  
Historic Tampa/Hillsborough County  
Preservation Board  
RINGLING MUSEUM OF ART

FLORIDA DEPARTMENT OF STATE  
Sandra B. Mortham  
Secretary of State  
DIVISION OF ELECTIONS

March 26, 1996

Mr. Thom Rumberger  
General Counsel  
Save Our Everglades Committee  
201 South Orange Avenue  
Suite 300  
Orlando, Florida 32802

Dear Mr. Rumberger:

This office is in receipt of petition forms, ballot titles and ballot summaries for the following proposed initiative amendments:

Responsibility for Paying Costs of Water Pollution  
Abatement in the Everglades (Serial No. 96-01)

Everglades Trust Fund (Serial No. 96-02)

Fee on Everglades Sugar Production (Serial No. 96-03)

The Division of Elections approves these formats which you submitted for the above-referenced initiatives and copies are attached for your files. According to Florida Administrative Code Rule 1S-2.009(12), the Division of Elections shall assign serial numbers to approved petitions. Those serial numbers are noted above.

No review of the legal sufficiency of the text of this proposed amendment has been, nor will be undertaken by the Division of Elections.

Please let this office know if it can assist you further.

Sincerely,

A handwritten signature in cursive script that reads "David A. Rancourt".

David A. Rancourt  
Division Director

DAR/pr  
Enclosure  
cc: Supervisor of Elections  
with copy of petition

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.

Fla. Stat. Section 104.185 - It is unlawful for any person to knowingly sign a petition or petitions for a particular issue or candidate more than one time. Any person violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.083.

**I am a registered voter of Florida and hereby petition the Secretary of State to place this amendment to the Florida Constitution on the ballot in the general election.**

(Please print information as it appears on voter I. D. Card.)

Name \_\_\_\_\_

Street Address \_\_\_\_\_

City \_\_\_\_\_ Zip Code \_\_\_\_\_

County \_\_\_\_\_

Voter Registration Number \_\_\_\_\_ (or) Date of Birth \_\_\_\_\_

Is this a change of address for voter registration?  Yes  No

Signature \_\_\_\_\_ Date \_\_\_\_\_

Paid Political Advertisement:

**SAVE OUR EVERGLADES, INC.**  
 D/B/A SAVE OUR EVERGLADES COMMITTEE  
 PO BOX 547068  
 ORLANDO FL 32854-7068  
 1 888 EVERGLADES (383-7452)

Serial No. 96-01  
 Date App. ~~3-25-96~~ 3-26-96  
 OFFICIAL USE ONLY



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.

(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.

Fla. Stat. Section 104.185 - It is unlawful for any person to knowingly sign a petition or petitions for a particular issue or candidate more than one time. Any person violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.083.

**I am a registered voter of Florida and hereby petition the Secretary of State to place this amendment to the Florida Constitution on the ballot in the general election.**

(Please print information as it appears on voter I. D. Card.)

Name \_\_\_\_\_

Street Address \_\_\_\_\_

City \_\_\_\_\_ Zip Code \_\_\_\_\_

County \_\_\_\_\_

Voter Registration Number \_\_\_\_\_ (or) Date of Birth \_\_\_\_\_

Is this a change of address for voter registration?  Yes  No

Signature \_\_\_\_\_ Date \_\_\_\_\_

Paid Political Advertisement:

**SAVE OUR EVERGLADES, INC.**  
NEVA SAVE OUR EVERGLADES COMMITTEE  
PO BOX 547068  
ORLANDO FL 32854-7068  
PO EVERGLADES (388-7452)

Serial No. 96-02  
Date App. ~~3-25-96~~ 3-26-96  
OFFICIAL USE ONLY

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 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.

Fla. Stat. Section 104.185 - It is unlawful for any person to knowingly sign a petition or petitions for a particular issue or candidate more than one time. Any person violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.083.

**I am a registered voter of Florida and hereby petition the Secretary of State to place this amendment to the Florida Constitution on the ballot in the general election.**

(Please print information as it appears on voter I. D. Card.)

Name \_\_\_\_\_

Street Address \_\_\_\_\_

City \_\_\_\_\_ Zip Code \_\_\_\_\_

County \_\_\_\_\_

Voter Registration Number \_\_\_\_\_ (or) Date of Birth \_\_\_\_\_

Is this a change of address for voter registration?  Yes  No

Signature \_\_\_\_\_ Date \_\_\_\_\_

Paid Political Advertisement:

**SAVE OUR EVERGLADES, INC.**  
 DIBA SAVE OUR EVERGLADES COMMITTEE  
 PO BOX 547068  
 ORLANDO FL 32854-7068  
 1 888 EVERGLADES (383-7452)

Serial No. 96-03  
 Date App. ~~3-25-96~~ 3-26-96  
 OFFICIAL USE ONLY

# State of Florida



## Department of State Division of Elections

I, Sandra B. Mortham, Secretary of State of the State of Florida, do hereby certify that the attached are true and correct copies of a letter and petition format from Richard A. Keller dated April 3, 1996, as shown by the records of this office.

Given under my hand and the  
Great Seal of the State of Florida,  
at Tallahassee, the Capital, this the  
8th day of July 1996



*Sandra B. Mortham*

Sandra B. Mortham  
Secretary of State

DSDE B07 (1-95)

LAW OFFICES  
RUMBERGER, KIRK & CALDWELL  
PROFESSIONAL ASSOCIATION

SIGNATURE PLAZA, SUITE 300 (32801)  
201 SOUTH ORANGE AVENUE  
POST OFFICE BOX 1873  
ORLANDO, FLORIDA 32802-1873  
(407) 872-7300  
TELECOPIER (407) 841-2133

100 NORTH TAMPA STREET (33602)  
SUITE 2000  
POST OFFICE BOX 3390  
TAMPA, FLORIDA 33601-3390  
(813) 223-4253  
TELECOPIER (813) 221-4752

ONE BISCAYNE TOWER, SUITE 3100  
2 SOUTH BISCAYNE BOULEVARD  
MIAMI, FLORIDA 33131-1897  
(305) 358-5377  
TELECOPIER (305) 371-7580

106 EAST COLLEGE AVENUE, SUITE 700 (32301)  
POST OFFICE BOX 10507  
TALLAHASSEE, FLORIDA 32302-2507  
(904) 222-6550  
TELECOPIER (904) 222-8783

PLEASE REPLY TO:

ORLANDO

April 3, 1996

VIA FACSIMILE TRANSMISSION AND  
ORIGINAL BY OVERNIGHT MAIL  
facsimile# (904) 488-1768

Ms. Paula Reams  
Division of Elections, Room 1801  
The Capital  
Tallahassee, FL 32399-0250

RE: Submission Of Ballot Initiative for Approval  
As To Format

Dear Ms. Reams

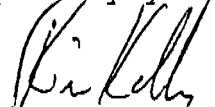
This will serve as a follow up to our telephone conversation earlier today. As you know, I work with Thom Rumberger, General Counsel for the Save Our Everglades Committee. Pursuant to Rule 1S-2.009, Mr. Rumberger asked me to forward to the Division of Elections the enclosed proposed amendments for approval as to the format. There are no substantive changes from the format which the Division of Elections approved earlier this year for the three amendments proposed by the Save Our Everglades Committee. Rather, the difference is that this format has the name, address, etc. of the voter listed one time at the top of the page, rather than having the voter list these items three separate times. Of course, under this format, the voter is still required to sign each individual amendment he or she supports. As you may recall, this is the same format approved by the Division of Elections for the Tax Cap amendments.

FILED  
96 APR - 11 AM 9:21  
SECRETARY OF STATE

April 3, 1996  
Page 2

I appreciate your assistance in having the Division of Elections review the format of these proposed amendments and I look forward to hearing from you in the near future. Please contact me at the above address, my direct line is (407) 839-2127.

Very truly yours,



Richard A. Keller

RAK:maf  
Enclosure

101527





NAME \_\_\_\_\_ VOTER REGISTRATION # (OR) DATE OF BIRTH \_\_\_\_\_

ADDRESS \_\_\_\_\_ CITY \_\_\_\_\_ COUNTY \_\_\_\_\_ ZIP \_\_\_\_\_

Is this a change of address for voter registration?  YES  NO

Serial No. 96-03  
Date App. 3-26-96

Paid Political Advertisement: SAVE OUR EVERGLADES, INC. DBA SAVE OUR EVERGLADES COMMITTEE, PO BOX 547068, ORLANDO FL 32854-7068, 1 888 EVERGLADES (383-7452)  
Fla. Stat. Section 104.185 - It is unlawful for any person to knowingly sign a petition or petitions for a particular issue or candidate more than one time.  
Any person violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.083.

# FEE ON EVERGLADES SUGAR PRODUCTION

**PLEASE READ CAREFULLY AND SIGN EXACTLY AS YOU ARE REGISTERED TO VOTE**

## PROPOSED FLORIDA CONSTITUTIONAL 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.

### BALLOT 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.

### PLEASE SIGN AND DATE

YOUR SIGNATURE HELPS PUT THE PROPOSED AMENDMENT TO A VOTE  
I am a registered voter of Florida and hereby petition the Secretary of State to place this amendment to the Florida Constitution on the ballot in the general election.

X \_\_\_\_\_  
Signature Date





# STATE OF FLORIDA

88,343

OFFICE OF ATTORNEY GENERAL

ROBERT A. BUTTERWORTH

June 27, 1996

FILED

OFFICE

JUN 27 1996

CLERK, SUPREME COURT

157  
CITIZEN CENTER

The Honorable Gerald Kogan  
Chief Justice, and  
Justices of The Supreme Court  
of Florida  
The Supreme Court Building  
Tallahassee, Florida 32399-1925

Dear Chief Justice Kogan and Justices:

In accordance with the provisions of Article IV, section 10, Florida Constitution, and section 16.061, Florida Statutes, it is my responsibility to petition this Honorable Court for a written opinion as to the validity of an initiative petition circulated pursuant to Article XI, section 3, Florida Constitution.

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 Honorable Gerald Kogan  
Page Two

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.

On June 18, 1996, the Secretary of State, as required by section 15.21, Florida Statutes, submitted to this office an initiative petition seeking to amend the State Constitution to levy an Everglades Sugar Fee. The full text of the proposed amendment states:

(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.

The Honorable Gerald Kogan  
Page Three

(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.

The ballot title for the proposed amendment is "Fee on Everglades Sugar Production." The summary for the proposed amendment is:

Provides that the South Florida Water Management District shall levy an Everglades Sugar Fee of 1¢ 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.

#### BALLOT TITLE AND SUMMARY

Section 16.061, Florida Statutes, requires the Attorney General to petition this Honorable Court for an advisory opinion as to whether the proposed ballot title and summary comply with section 101.161, Florida Statutes.

Section 101.161, Florida Statutes, prescribes the requirements for the ballot title and summary of a proposed constitutional amendment, stating in relevant part:

Whenever a constitutional amendment . . . is submitted to the vote of the people, the substance of such amendment . . . shall be printed in clear and unambiguous language on the ballot . . . . The substance of the amendment . . . shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. The

The Honorable Gerald Kogan  
Page Four

ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.

This Court has interpreted this statutory provision to mean that "the ballot title and summary . . . state in clear and unambiguous language the chief purpose of the amendment." Advisory Opinion to the Attorney General--Save Our Everglades, 636 So. 2d 1336, 1341 (Fla. 1994), quoting, Askew v. Firestone, 421 So. 2d 151, 154-155 (Fla. 1982). The ballot title and summary must be fair and advise the voter sufficiently to enable him intelligently to cast his ballot. Askew v. Firestone, 421 So. 2d 151, 155 (Fla. 1982), quoting, Hill v. Milander, 72 So. 2d 796, 798 (Fla. 1954).

The ballot title and summary of the "Fee on Everglades Sugar Production" amendment states the chief purpose of the measure -- to impose a fee on sugar production in the Everglades to be used for the purposes of conservation and protection of natural resources and the abatement of water pollution within the Everglades. As this Court stated in Advisory Opinion to the Attorney General--Limited Political Terms in Certain Elective Offices, 592 So. 2d 225, 228 (Fla. 1991), and recently reiterated in Advisory Opinion to the Attorney General--Tax Limitation, Case No. 86,600 (Fla. May 9, 1996), the summary is not required to explain every detail or ramification of the proposed amendment. It would appear, therefore, that the ballot title and summary adequately informs the voter of the chief purpose of the amendment.

Therefore, I respectfully request this Honorable Court's opinion as to whether the ballot title and substance of the constitutional amendment, proposed by initiative petition, comply with section 101.161, Florida Statutes.

#### SINGLE SUBJECT LIMITATION

Section 16.061, Florida Statutes, requires the Attorney General, within 30 days after receipt of the proposed amendment to the

The Honorable Gerald Kogan  
Page Five

Florida Constitution by citizens' initiative, to petition this Honorable Court for an advisory opinion as to whether the text of the proposed amendment complies with Article XI, section 3, Florida Constitution. Article XI, section 3, Florida Constitution, reserves to the people the power to propose the revision or amendment of any portion of the Constitution by initiative. It requires, however, that any such revision or amendment "embrace but one subject and matter directly connected therewith." Evans v. Firestone, 457 So. 2d 1351, 1352 (Fla. 1984).

An initiative meets this single-subject requirement if it has "a logical and natural oneness of purpose[.]" Fine v. Firestone, 448 So. 2d 984, 990 (Fla. 1984). As this Court stated in Advisory Opinion to the Attorney General--Restricts Laws Related to Discrimination, 632 So. 2d 1018, 1020 (Fla. 1994), "[t]o ascertain whether the necessary 'oneness of purpose' exists, we must consider whether the proposal affects separate functions of government and how the proposal affects other provisions of the constitution."

This Court in Advisory Opinion to the Attorney General--Save Our Everglades, *supra*, concluded that the imposition of a fee on sugar production constituted the performance of a legislative function. The Court found that the initiative also contemplated the exercise of "vast" executive powers, including the building and operation of stormwater treatment areas and other facilities with state funds.

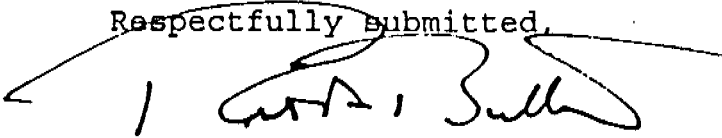
The present initiative, while authorizing the imposition of a fee on sugar production in the Everglades, limits the use of the fund for conservation and protection of the natural resources and abatement of water pollution within the Everglades, and requires that the fund be administered by a special district consistent with statutory law. The proposed amendment does not grant the broad executive powers authorized under the previously stricken petition but rather requires that such powers be

The Honorable Gerald Kogan  
Page Six

exercised as legislatively prescribed. It would not, therefore, raise the same concerns as the earlier proposed amendment.

Therefore, I respectfully request this Honorable Court's opinion as to whether the constitutional amendment, proposed by initiative petition, complies with Article XI, section 3, Florida Constitution.

Respectfully submitted,



Robert A. Butterworth  
Attorney General

RAB/tgk

Enclosures

cc: The Honorable Sandra Mortham  
Secretary of State  
The Capitol  
Tallahassee, Florida 32399-0250

Mr. Jon Mills  
Post Office Box 117629  
Gainesville, Florida 32611-7629

Mr. Thom Rumberger  
Post Office Box 1873  
Orlando, Florida 32802-1873