

OA 8-29-96

IN THE SUPREME COURT OF FLORIDA

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

Upon Requests From The Attorney General
For Advisory Opinions As To The
Validity Of Initiative Petitions

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

**ADVISORY OPINION
TO THE ATTORNEY GENERAL RE:
EVERGLADES TRUST FUND**

**ADVISORY OPINION
TO THE ATTORNEY GENERAL RE:
RESPONSIBILITY FOR PAYING COSTS
OF WATER POLLUTION ABATEMENT
IN THE EVERGLADES**

FILED

CHIEF CLERK

JUL 28 1996

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

**INITIAL BRIEF AND APPENDIX OF
INTERNATIONAL ASSOCIATION OF MACHINISTS
OPPOSING THE PROPOSED AMENDMENTS**

GELLER, GELLER & GARFINKEL

PEGGY FISHER
Florida Bar #: 198994
1815 Griffin Road Suite 403
Dania, FL 33004
Phs: (954) 920-2300
(305) 949-6600
Fax: (954) 920-6885

**Attorneys for International
Association of Machinists**

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	i
INTRODUCTION	1
STATEMENT OF THE CASE AND THE FACTS	1
SUMMARY OF THE ARGUMENT	3
ARGUMENT:	5
I. FEE ON EVERGLADES SUGAR PRODUCTION	5
A. "FEE ON EVERGLADES SUGAR PRODUCTION" IS USE OF MISLEADING LANGUAGE	6
B. "FEE ON EVERGLADES SUGAR PRODUCTION" VIOLATES THE SINGLE-SUBJECT RULE	8
II. EVERGLADES TRUST FUND	10
A. THE EVERGLADES TRUST FUND VIOLATES THE SINGLE-SUBJECT RULE	11
B. THE EVERGLADES TRUST FUND SUMMARY LANGUAGE IS MISLEADING AND THEREFORE, THE INITIATIVE SHOULD NOT APPEAR ON THE BALLOT	12
III. THOSE WHO CAUSE POLLUTION SHALL BE PRIMARILY RESPONSIBLE	13
A. THE LANGUAGE THAT "THOSE WHO CAUSE POLLUTION SHALL BE PRIMARILY RESPONSIBLE FOR PAYING THE COST" IS IMPERMISSIBLY MISLEADING AND IS CALCULATED TO CONFUSE THE VOTERS	14
B. "THOSE WHO CAUSE POLLUTION SHALL BE PRIMARILY RESPONSIBLE FOR PAYING THE COST" VIOLATES THE SINGLE-SUBJECT RULE.	17
IV. THE METAMORPHOSIS OF THE "SAVE OUR EVERGLADES" PETITION (<i>SOE I</i>) INTO THREE "SAVE OUR EVERGLADES" PETITIONS DID NOT SUFFICIENTLY CURE THE DEFECTS EARLIER FOUND BY THIS COURT	17

CONCLUSION	20
CERTIFICATE OF SERVICE	21
INDEX TO APPENDIX APPENDIX	Attached

GELLER, GELLER & GARFINKEL

1815 GRIFFIN ROAD • SUITE 403 • DANIA, FLORIDA 33004 • DADE: (305) 949-6600 • BROWARD: (305) 920-2300

TABLE OF AUTHORITIES

CASES

<i>Advisory Opinion to the Attorney General re Casino Authorization, Taxation and Regulation,</i> 656 So. 2d 466 (Fla. 1995)	7, 8, 16, 17
<i>Advisory Opinion to the Attorney General, re Funding for Criminal Justice,</i> 639 So.2d 972 (Fla. 1994)	11
<i>Advisory Opinion to the Attorney General - Save Our Everglades,</i> 636 So.2d 1336 (Fla. 1994)	2, 3, 4, 8, 9, 17, 18
<i>Advisory Opinion to Attorney General re Stop Early Release of Prisoners,</i> 647 So.2d 724 (Fla. 1994)	7, 18, 19
<i>Advisory Opinion to Attorney General re Tax Limitation,</i> 644 So.2d 486 (Fla. 1994)	6, 10, 16
<i>Advisory Opinion to the Attorney General re Limited Casinos,</i> 644 So.2d 71 (Fla. 1994)	15
<i>Askew v. Firestone,</i> 421 So. 2d 151 (Fla. 1982)	10, 18, 19
<i>Evans v. Firestone,</i> 457 So.2d 1351 (Fla. 1984)	19
<i>Fine v. Firestone,</i> 448 So.2d 984 (Fla. 1984)	9
<i>Home Builders and Contractors Association of Palm Beach County, Inc., v. Board of Palm Beach County Commissioners,</i> 446 So. 2d 140 (Fla. 4th DCA 1983) rev. den. 451 So.2d 848 (Fla.), app. disp. 469 U.S. 976 (1984)	7
<i>Smith v. American Airlines, Inc.,</i> 606 So.2d 618 (Fla. 1992)	6, 13

FLORIDA CONSTITUTION

Art. II, §7	5, 14
Art. III, §19(f)	10

Art. IV, § 10	1
Art. VII, §1	9
Art. VII, §1(a)	9
Art. VII, §9	5
Art. XI, §3	2

FLORIDA STATUTES

§ 16.061	1
§101.161	2
§101.161(1)	2, 15
§373.4592 (5)(a), (d), and (e)	15

INTRODUCTION

INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, (hereinafter "IAM"), is a labor union, members of which hold up to 3,000 jobs in the Florida sugar industry. If the petitions of Save Our Everglades, Inc., d/b/a Save our Everglades Committee (hereinafter "SOE"), are allowed to remain on the ballot and receive sufficient votes to be incorporated into the Florida Constitution, jobs of some members of IAM will be sacrificed. In addition, as citizens of the State of Florida, IAM members share an interest, with all other Floridians, in the integrity of the Florida Constitution and its initiative process.

STATEMENT OF THE CASE AND THE FACTS

The Attorney General of Florida, pursuant to Article IV, section 10, Florida Constitution, and section 16.061 Florida Statutes, has requested advisory opinions from this Court as to whether proposed amendments to the Constitution to levy an Everglades Sugar Fee against each first processor of sugar cane grown in the Everglades Agricultural Area (Case No. 88,343) (FEE ON EVERGLADES SUGAR PRODUCTION) to establish an Everglades Trust Fund (Case No. 88,344) (EVERGLADES TRUST FUND) and to provide responsibility for paying costs of abatement of water pollution in designated areas of the Everglades (Case No. 88,345) (THOSE WHO CAUSE POLLUTION SHALL BE PRIMARILY RESPONSIBLE) comply with Article

XI, section 3, Florida Constitution¹ and whether the explanatory statements and ballot titles adequately comply with section 101.161 Florida Statutes.²

In 1994, SOE attempted to place an initiative petition on the ballot "to amend the Florida Constitution, by creating a trust to restore the Everglades funded by a fee on raw sugar." *Advisory Opinion to the Attorney General - Save Our Everglades*, 636 So.2d 1336, 1337 (Fla. 1994) (hereinafter *SOE I*). This Court found that the petition, as then drafted, violated both the single-subject provision and the mandate of section 101.161 that the ballot language state clearly and unambiguously the chief purpose of the measure. This 1996 version, now presented for approval by SOE, attempts to remedy the defects noted by this Court in SOE's single petition, by metamorphasizing the scheme into three, interrelated petitions which still are required to meet the mandates both of Article XI, section 3 of the Constitution and of section 101.161(1).

¹ Article XI, section 3, Florida Constitution, requires that any revision or amendment proposed by initiative "shall embrace but one subject and matter directly connected therewith."

² Section 101.161(1) provides, in pertinent part:
[T]he substance of such amendment or other public measures shall be printed in clear and unambiguous language on the ballot The substance of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.

SUMMARY OF THE ARGUMENT

I

A. The language contained in the Summary of the "Fee on Everglades Sugar Production" is misleading because the summary provides for a levy on "raw sugar as grown in the Everglades Agricultural Area", but the text provides for a levy against "each first processor", from sugar cane grown in the "Everglades Agricultural Area". The voter is left uninformed as to who or what a "first processor" is.

Further, the levy to be imposed is called a fee, but it is not a fee; it is a tax. This, too, is misleading to the voter.

B. The defects of *SOE I* have not been remedied. This Petition still deals with two subjects, restoration of the Everglades and exacting a fee from the sugar industry for that restoration.

II

A. Again, as in *SOE I*, the Everglades Trust Fund is violative of the single-subject rule, joining both legislative and executive functions.

B. The language summarizing the proposed amendment creating the Everglades Trust Fund is misleading. The Summary advises that the Trust Fund is *established* for purposes of conservation and protection. The text of the proposed amendment recites that the

purpose of the Everglades Trust Fund is to make funds available to assist in conservation and protection. This discrepancy implies to the voter a more powerful entity than, in fact, will be created, thus misleading the voter.

III

A. The summary of the petition, seeking to impose liability for Everglades clean-up, advises that the costs shall primarily be paid by those in the Everglades Agricultural Area who cause pollution. Notwithstanding that language, the true effect of this amendment cannot be foretold. Many entities and causes, other than the sugar industry, stand to be held ultimately responsible, and liable, for costs of clean-up in the Everglades. The amendment conveys to the voter that clean-up will be done with "other people's money"; in fact, the costs may be borne by many segments of society, including the taxpayers, who are the voters.

B. Again, as in *SOE I*, the judicial and legislative functions have been combined, in violation of the single-subject rule.

IV

The scheme, of breaking the original *SOE* petition into three petitions, has cured only some of the defects noted by this Court, in *SOE I*. This new package, presented to this Court, when taken as a whole, is still misleading. It flies under "false colors", luring the unsuspecting voter into believing that Everglades pollution, caused by multiple sources, is going to be resolved by

levying a one-cent per pound "fee" on the sugar industry. This is not accurate and other elements of our society will have to "step up to the plate" and pay a fair share, which may be more than what the sugar industry is liable for, in order that the Everglades can be preserved for succeeding generations of Floridians.

ARGUMENT

I.

FEE ON EVERGLADES SUGAR PRODUCTION

(Case No. 88,343)

Title: Fee On Everglades Sugar Production (5 words)

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

Full Text Of The Proposed Amendment:

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

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

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

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

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

A. "FEE ON EVERGLADES SUGAR PRODUCTION" IS USE OF MISLEADING LANGUAGE

The amendment providing for the tax on Everglades sugar is promoted by SOE as levying a fee on each first processor. In the *Advisory Opinion to Attorney General re Tax Limitation*, 644 So.2d 486 (Fla. 1994), this Court held that where the summary used the term "owner", but the text of the initiative was silent as to the meaning of that term, the summary was misleading. Here, the summary provides for a levy on "raw sugar as grown in the Everglades Agricultural Area", but the text provides for a levy against "each first processor, from sugar cane grown in the Everglades Agricultural Area." Nothing in the text of the amendment, nor in the title or summary, illuminates what is meant by the words "first processor". A primary purpose of this initiative is to impose a levy upon somebody and yet the voter is not informed, and has no way of knowing, upon whom the levy is imposed. The summary fails to communicate "even the chief purpose of the proposed amendment" and thus is fatally defective. *Smith v. American Airlines, Inc.*, 606 So.2d 618 (Fla. 1992) (holding that a ballot summary was not written clearly enough for even more

educated voters to discern that some leaseholds in government-owned property would shift from the intangible tax-rate to the real property tax-rate and thus was fatally misleading). Here, even "more educated voters" are unlikely to know who or what qualifies as a "first processor" and thus, upon whom the levy will fall.

Further, the summary and amendment misleadingly refer to the levy as a "fee" and not a "tax". Since it is not determined how much of the pollution in the Everglades is caused by "first processors", it is apparent that the funds raised by the imposition of such a fee may far outstrip the costs occasioned by first processors of sugar. In that event, the monies raised would be more fairly considered to be a tax, and not a fee. *Home Builders and Contractors Association of Palm Beach County, Inc., v. Board of Palm Beach County Commissioners*, 446 So. 2d 140 (Fla. 4th DCA 1983) rev. den. 451 So.2d 848 (Fla.), app. disp. 469 U.S. 976 (1984). Again, this language on the ballot would mislead voters into thinking a fee, proportionate with the damage caused, is all that is being voted for. However, if implemented, the consequences of the amendment may very well be to impose a disproportionate burden upon first processors of sugar, once again misleading the voters. See *Advisory Opinion to Attorney General re Stop Early Release of Prisoners*, 647 So.2d 724 (Fla. 1994). In *Advisory Opinion to the Attorney General re Casino Authorization, Taxation and Regulation*, 656 So. 2d 466 (Fla. 1995), summary language which implied that casinos would be allowed only on operational, floating vessels (riverboats [and] commercial vessels) was compared with the

amendment text (on board stationary and non-stationary riverboats and...vessels), which clearly did not conform with the implications of the summary. This discrepancy mandated a holding that the summary failed to accurately describe the text and disqualified the initiative from the ballot. Here, it is not necessary to seek the implications of the summary language - it is spelled (F-E-E) out, 'loud and clear'. SOE has tried to name their tax a fee; no matter what they name it, it smells the same - it is a tax.³ And, it makes the summary language, by which voters are supposed to inform themselves, inaccurate and ineligible for the ballot. It is also, incidentally, an example of political rhetoric, which was denounced by this court in *SOE I* and in *Advisory to the Attorney General re Casino Authorization, Taxation and Regulation*, 656 So. 2d 466, 469 (Fla. 1995) (failure to admit what the amendment really seeks to accomplish is fatally defective).

**B. "FEE ON EVERGLADES SUGAR PRODUCTION"
VIOLATES THE SINGLE-SUBJECT RULE**

The strictures of Florida constitutional law, prohibiting a petition-driven constitutional amendment from encompassing more than a single subject were clearly found to have been violated by this Court in *Advisory Opinion to the Attorney General - Save Our Everglades*, 636 So. 2d 1336 (Fla. 1994).

Although *Save Our Everglades, Inc.*, evidently attempted to cure defects found in *SOE I*, by recrafting their amendatory scheme

³Please see discussion immediately *infra*.

into a veritable three-headed monster, nowhere did they fail as badly as in attempting to comply with the single-subject requirement in imposing a fee on sugar. There still exists a duality of purposes, one to restore the Everglades (the fee is levied to raise funds for purposes of conservation and protection and abatement of pollution in the Everglades), and the other is to compel the sugar industry to fund the restoration (the fee is to be assessed against each first processor, from sugar cane grown in the Everglades Agricultural Area). *Id.*, at 1341. This sort of logrolling is precisely what the single-subject rule, and the body of case law interpreting it, was designed to foreclose. Specifically because the initiative method of amending the Constitution fails to provide a "filtering legislative process", affords no opportunity for public hearing and debate on the proposal, nor of its drafting, the single-subject requirement, was imposed upon such initiatives. *Fine v. Firestone*, 448 So.2d 984 (Fla. 1984).

The levy proposed by SOE is not a fee; in fact, it is a tax. Article VII, section 1(a) of the Florida Constitution provides that "no tax shall be levied except in pursuance of law." The Fee on Everglades Sugar Production conflicts with article VII, section 1(a), because it is a tax imposed by the Constitution and not by general law. Article VII, section 1, also provides that all forms of taxation, other than *ad valorem*, are preempted to the state, except as provided by general law. SOE proposes to affect that constitutional provision, without informing the voter.

Article VII, section 9 provides that general law shall be the only method of levying a tax, and also limits water management millage rates to one mill, for *ad valorem* taxes. Again, SOE has failed to inform the voters that these existing constitutional sections will be impacted by the amendment submitted to them; as such, it cannot remain on the ballot. *Advisory Opinion to Attorney General re Tax Limitation*, 644 So. 2d 486 (Fla. 1994).

And once again, what SOE fails to say prevents fair notice to the voters of the sweep of its proposal. See *Askew v. Firestone*, *supra*. Just as the Save Our Everglades scheme violated the single-subject requirement in 1994, the one-cent per pound sugar fee to clean up the Everglades violates this anti-logrolling provision again, in 1996.

II.

EVERGLADES TRUST FUND

(Case No. 88,344)

Title: Everglades Trust Fund (3 words)

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

Full Text of the Proposed Amendment:

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

SECTION 17, Everglades Trust Fund.

(a) There is hereby established the Everglades Trust Fund, which shall not be subject to termination pursuant to Article III, Section 19(f). The purpose of the

Everglades Trust Fund is to make funds available to assist in conservation and protection of natural resources and abatement of water pollution in the Everglades Protection Area and the Everglades Agricultural Area. The trust fund shall be administered by the South Florida Water Management District, or its successor agency, consistent with statutory law.

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

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

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

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

A. THE EVERGLADES TRUST FUND VIOLATES THE SINGLE-SUBJECT RULE

In its *Advisory Opinion to the Attorney General, re Funding for Criminal Justice*, 639 So.2d 972 (Fla. 1994), this Court approved of initiative language which created a trust fund, because the funding of the trust and allocation of money from the trust remained with the legislature. Therefore, the Criminal Justice Trust Fund Amendment was held to have met the single-subject requirement. Here, the initiative creates the trust fund, but the trust is administered by the executive department, the South

Florida Water Management District. Further, the Trust Fund proposes to fix the boundaries of the geographic area in which its funds may be expended (as defined in statute in effect on January 1, 1996). Thus, should the legislature, in later years, enlarge the boundaries of these areas, the legislature would be constitutionally prohibited from expending Trust funds in parts of the Everglades it judged in need of pollution abatement. The initiative impinges on the legislative function, without advising the voter.

This commingling of legislative and executive functions is prohibited by the single-subject rule and the Everglades Trust Fund may not be included on the ballot.

B. THE EVERGLADES TRUST FUND SUMMARY LANGUAGE IS MISLEADING AND THEREFORE, THE INITIATIVE SHOULD NOT APPEAR ON THE BALLOT.

The language of the summary says that it "establishes an Everglades Trust Fund to be administered by the South Florida Water Management District *for purposes of conservation and protection....*". (emphasis supplied) The text, however, recites that *the purpose of the Everglades Trust Fund is to make funds available to assist in conservation and protection....* (emphasis supplied). If there is no significant difference between a trust fund created "for purposes of conservation and protection" and one which is created to "assist in conservation and protection of natural resources", the framers of this initiative should have retained word, "assist", in the summary. The summary makes a statement far stronger than what is actually to be included in the

Constitution. This renders the ballot language impermissibly misleading to the voters, who most likely will believe that they are creating a trust fund which will conserve and protect the Everglades (with many Floridians, this is as popular as Mom and apple-pie), rather than that they are creating a trust fund which will merely assist in protection of the Everglades. The burden of informing the public is on the ballot title and summary; that burden should not fall only on the press and on opponents of the measure. *Smith v. American Airlines, Inc.*, 606 So.2d 618 (Fla. 1992). The language selected by Save Our Everglades, Inc., misleads the voter into believing he is creating a far stronger and more powerful entity than is, in fact, being established. For this reason, the initiative does not meet the requirements of section 101.161 Florida Statutes and may not be presented to the voters.

III.

THOSE WHO CAUSE POLLUTION SHALL BE PRIMARY RESPONSIBLE

(Case No. 88,345)

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

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

Full Text of the Proposed Amendment:

(a) The Constitution currently provides, in Article II, Section 7,⁴ 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. THE LANGUAGE THAT "THOSE WHO CAUSE POLLUTION SHALL BE PRIMARILY RESPONSIBLE FOR PAYING THE COST" IS IMPERMISSIBLY MISLEADING AND CALCULATED TO CONFUSE THE VOTERS.

The language proposed to be included on the ballot unmistakably conveys to the voter the impression that "other people's money" will be used to pay for the cost of abatement of water pollution in the Everglades Protection Area or the Everglades Agricultural Area (hereinafter, both will be referred to generically, as "the Everglades"). The chief purpose of these

⁴ Article II, section 7, Florida Constitution, currently provides as follows:

Natural Resources and scenic beauty. 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.

proposed amendments, according to their proponents, is "to make the sugar industry pay its fair share to clean up the mess it's made in the Everglades". (A-2) However, the language proposed to be added to the Constitution, as summarized for the ballot, says that those who cause water pollution in the Everglades shall be primarily responsible. The voter may be voting for only the sugar industry to pay the cost of abatement of water pollution.

That same voter may be shocked to learn, after this measure has been included in the Constitution, that the pollution in the Everglades was caused, not only by the sugar industry, but by urban development, including the paving over of environmentally-sensitive lands, by runoff of inadequately drained stormwater, as well as by flood control of natural water flow, to avoid flooding of inhabited areas once rural, and now suburban. Disposal of the mountains of garbage, produced, by our technology-driven society, allows pollutants to reach into the aquifer or, alternatively, allows the burning of toxic materials, which may find their way into the Everglades. Even where agriculture is the culprit in pollution of the Everglades, that agriculture is not limited to the sugar industry. See, e.g., section 373.4592 (5)(a), (d), and (e), Florida Statutes, reflecting the presence of vegetable farmers in the Everglades.

Section 101.161(1) requires the chief purpose of an amendment to be stated in clear and unambiguous language, so that the voter is put on fair notice of the contents of the proposed amendment, to enable the casting of an intelligent and informed vote. *Advisory*

Opinion to the Attorney General re Limited Casinos, 644 So.2d 71, 74 (Fla. 1994). Here, the ballot language could lead a voter to believe that the initiative is limited to the sugar industry or "those primarily responsible". But the text of the proposed initiative is silent as to the identity of "those who cause water pollution within the Everglades Agricultural Area or the Everglades Protection Area". The language is thus misleading and ambiguous, and should be stricken from the ballot. *Advisory Opinion to the Attorney General re Tax Limitation*, 644 So.2d 486 (Fla. 1994) (where the term "owner" included both natural persons and businesses, yet the text of the proposed initiative was silent as to the meaning of the term owner, the summary language was misleading and could not remain on the ballot).

To imbed within the Constitution the requirement that those who cause pollution are primarily responsible, creates a correlative responsibility upon others who cause pollution, yet are less than primarily responsible. The proposed ballot language makes it appear to the voters that only "those people" will pay to clean up pollution; in fact, all of us may be collectively responsible (even if not primarily responsible) for the final bill to clean up the Everglades. To paraphrase Walt Kelly's Pogo, we have seen the enemy, and it is us. The ballot, however, does its best to conceal that fact of life from those who are being asked to decide the issue. The false impression created and the lack of candor from the framers render this ballot proposal every bit as improper as what this court rejected in *Advisory Opinion re Casino*

Authorization, supra. In *Advisory Opinion to the Attorney General Re Stop Early Release of Prisoners, supra*, the Court considered not only the language of the summary, but the consequences of the enactment of the amendment, which would have led to a far different result than was promised to the voter, in the summary. Here, too, enactment of the proposed amendment will have consequences bound to surprise the voter who thought that somebody else, anybody else, would pay to clean up the Everglades.

B. "THOSE WHO CAUSE POLLUTION SHALL BE PRIMARILY RESPONSIBLE FOR PAYING THE COST" VIOLATES THE SINGLE-SUBJECT RULE.

This proposed amendment violates the single-subject rule. It combines a judicial function, that of assigning causation of pollution to the indefinite "those", who bear the liability for costs of abating the pollution, with the legislative function of determining which segment of society will bear the inevitable costs that result from doing business in our society. This public policy decision is an essentially legislative function. See, *Advisory Opinion to the Attorney General - Save Our Everglades*, 636 So.2d 1336 (Fla. 1994).

IV.

THE METAMORPHOSIS OF THE "SAVE OUR EVERGLADES" PETITION (SOE I) INTO THREE "SAVE OUR EVERGLADES" PETITIONS DID NOT SUFFICIENTLY CURE THE DEFECTS EARLIER FOUND BY THIS COURT.

The petition form in the present case (A-1) consists of the three petitions (case nos. 88,343, 88,344, and 88,345), presented to the voters and clearly marked with the name of the proponent,

Save Our Everglades, Inc. The purpose of the amendatory scheme proposed herein, when propounded by Save Our Everglades, Inc., in 1994, was found by this Court to have been to restore the Everglades and to compel the sugar industry to fund the restoration. *SOE I*, 636 So.2d 1336, 1341 (Fla. 1994). The new package of proposed amendments, taken as a whole, implies to the voter that those who cause water pollution shall be primarily responsible for paying the cost of "the abatement of that pollution", that a trust fund will be established for "abatement of water pollution in the Everglades" and that an Everglades Sugar Fee, on raw sugar grown in the Everglades, will be used for "abatement of water pollution in the Everglades". But nothing in the proposed scheme **requires** that the sugar industry will be primarily responsible for paying the cost of abatement of water pollution in the Everglades. The ballot title and summary must "state in clear and unambiguous language the chief purpose of the measure This is so that the voter will have notice of the issue contained in the amendment, will not be misled as to its purpose, and can cast an intelligent and informed ballot". *Askew v. Firestone*, 421 So.2d 151, 154-55 (Fla. 1982).

The danger is that the voter may think that the Constitution will now require the sugar industry to be the primary source of funding cleanup of the Everglades, when what is being enacted is a requirement that whoever is primarily responsible pay and the sugar industry may not turn out to be the primary polluter. The package, as a whole, thus violates the proscription against flying under

false colors, enunciated in *Askew v. Firestone, supra* at 156. The voter may adopt these provisions, to use "other people's money" to clean up pollution in the Everglades, without realizing that those "other people" are not limited to the sugar industry, the only element of Everglades pollution which is singled out for reparations. In *Evans v. Firestone*, 457 So.2d 1351 (Fla. 1984), this Court held that it was clearly misleading to reveal only half of a constitutional trade-off in a ballot summary. The problem is not so much with what this three-pack of amendments says, but with what it fails to say. See *Askew v. Firestone, supra* at 156. The ballot impermissibly fails to inform voters that the parties primarily responsible for polluting the Everglades may not be the sugar industry and therefore, the sugar industry may not bear the primary financial responsibility for the cleanup.

When a constitutional amendment was proposed to "ensure that state prisoners serve at least 85% of their sentence", this Court looked ahead, to the inevitable consequences of enacting such a constitutional provision, and realizing that the overall scheme which would result would not ensure inmates serving at least 85% of their sentences, found the ballot summary therefore inaccurate, and refused to allow it to appear on the ballot. *Advisory Opinion to the Attorney General re Stop Early Release of Prisoners*, 642 So.2d 724 (Fla. 1994).

Where ballot language creates the appearance of creating new

protections, when the actual effect is to do the opposite⁵, an initiative may be ineligible for inclusion on the ballot. See, *Florida League of Cities v. Smith*, 607 So.2d 397, 399 (Fla. 1992).

Here, too, the enactment of the scheme proposed to be included in the Constitution will not accomplish what its framers promise, and thereby misleads the voters. It should be barred from the ballot.

CONCLUSION

The petitions submitted by Save Our Everglades, whether taken individually, or considered as a package, are defective, as discussed in this Brief. Each petition is summarized in language which is inaccurate and misleading and each petition encompasses more than one subject, thus violating long established principles of Florida constitutional law. The petitions may not be included on the ballot and this Court should so hold.

Respectfully submitted,
GELLER, GELLER & GARFINKEL
Attorneys for International
Association of Machinists
1815 Griffin Road, Suite 403
Dania, FL 33004
Phs: (954) 920-2300
(305) 949-6600
Fax: (954) 920-6885

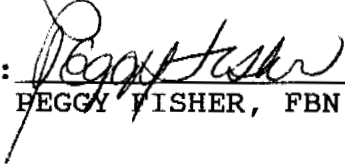
By: 
PEGGY FISHER, FBN: 198994

⁵Rather than exclusively taxing the sugar industry to abate pollution, other sources unforeseen by the voters may well be held responsible.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and accurate copy of the foregoing was furnished by United States mail to the parties on the attached service list, this 23rd day of July, 1996.

GELLER, GELLER & GARFINKEL
Attorneys for International
Association of Machinists
1815 Griffin Road, Suite 403
Dania, FL 33004
Phs: (954) 920-2300
(305) 949-6600
Fax: (954) 920-6885

By: 
PEGGY FISHER, FBN: 198994

SERVICE LIST

The Honorable Robert A. Butterworth
Attorney General
The Capitol
Tallahassee, FL 32399-0250

Attorneys for SOE, the sponsor:

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

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

Attorney for U.S. Sugar
opposed to the amendments proposed:

Chesterfield Smith, Esq.
Susan L. Turner, Esq.
Holland & Knight
P.O. Drawer 810
Tallahassee, FL 32302

Attorneys for Flo-Sun, Inc. and
Sugar Cane Growers Cooperative of Florida,
opposed to the proposed amendments:

William B. Killian, Esq.
Donald M. Middlebrooks, Esq.
Steel Hector & Davis
1900 Phillips Point West
777 South Flagler Drive
West Palm Beach, FL 33401-6198

Bruce S. Rogow, Esq.
Beverly A. Pohl, Esq.
2441 S.W. 28th Avenue
Ft. Lauderdale, FL 33312-4554

Attorneys for Florida TaxWatch,
opposed to the proposed amendments:

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

Attorneys for Florida Farm Bureau,
opposed to the proposed amendments:

John Beranek, Esq.
Ausley & McMullen
P.O. Box 391
Tallahassee, FL 32302

Attorneys for Associated Industries
of Florida, opposed to the proposed
amendments:

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

Attorneys for National Council of
Senior Citizens, opposed to the proposed
amendments:

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

INDEX TO APPENDIX

- A 1 The three SOE II petitions
- A 2 SOE promotional materials

GELLER, GELLER & GARFINKEL

1815 GRIFFIN ROAD • SUITE 403 • DANIA, FLORIDA 33004 • DADE: (305) 949-6600 • BROWARD: (305) 920-2300

FLORIDA CONSTITUTIONAL AMENDMENT PETITION FORM
PRESS HARD AND PRINT LEGIBLY

Please print information as it appears on Voter I.D. Card

638744

A1

NAME _____ VOTER REGISTRATION # (OR) DATE OF BIRTH _____

ADDRESS _____ CITY _____ COUNTY _____ ZIP _____

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

Serial No. 96-01
Date App. 3-26-96

Paid Political Advertisement: **SAVE OUR EVERGLADES, INC.** DBA SAVE OUR EVERGLADES COMMITTEE, PO BOX 547066, ORLANDO FL 32854-7066, 1 888 EVERGLADES (343-7452)
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.

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.

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.

PLEASE SIGN AND DATE

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.

Signature _____ Date _____

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

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.

PLEASE SIGN AND DATE

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.

Signature _____ Date _____

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.

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

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.

SAVE OUR EVERGLADES

"A2"

June 20, 1996

[REDACTED]
[REDACTED]
Dear [REDACTED]

It is with a heavy heart that I write to you today.

Our precious Everglades have been badly damaged over the past 35 years by the "Big Sugar" industry.

Our Everglades have been reduced to less than half of their original size as more and more of Florida's wetlands have been drained in the interests of bigger and bigger profits for a small group of wealthy Sugar Barons.

However, I also write to you with a sense of hope. A hope that, finally, we can make the polluters pay to clean up their mess.

That's why I am asking for your help today.

You and I and millions of other Florida voters who care about our Everglades can **TAKE ACTION** this November! We can place the responsibility for Everglades clean-up where it belongs.

But - as a first step - will you please do the following **THREE CITIZEN ACTION STEPS TODAY:**

1.) **SIGN & RETURN THE ENCLOSED PETITIONS**

Help us put the initiatives on the ballot this Fall that will force the polluters to clean up our Everglades!

2.) **PUT OUR BUMPER STICKER ON YOUR CAR**

Proudly add your name to the growing list of Florida citizens who are fighting to Save Our Everglades!

444 Brickell Avenue Suite 250 Miami, Florida 33131 1-888 EVERGLADES (383-7452)

Paid political advertisement by Save Our Everglades. Contributions to Save Our Everglades Committee are not tax deductible.



3.) MAKE A GENEROUS CONTRIBUTION TODAY

Please send a gift of \$5, \$10, \$15, \$25 or more to help fund our CITIZEN CAMPAIGN when you return your petitions!

When you send us your signed PETITIONS and REPLY FORM, we will rush a CITIZEN ACTION KIT to you by return mail. I'll give you more details about our campaign in just a moment. But first, let me ask you an important question ...

Will you stand up for our Everglades?

I believe you and I have a moral duty to stand up for the Everglades. ~~Once we~~ this precious natural wonder would have no voice at all ...

Who is going to fight for Florida Bay as it smothers under a choking blanket of algae blooms?

Who will stand up for the Everglades' native sawgrass as it is crowded out by cattails, fed by ever greater pollution?

Who speaks for the wading birds of the Everglades - now that 90% of that population has vanished?

If we allow the Everglades to continue on its downward spiral, it can never be replaced. Once the Everglades are gone, they are gone forever.

In short, the Everglades and Florida Bay are irreplaceable.

But now, you and I and other concerned Floridians have an opportunity to protect and restore the miracle of nature we have come to know as the "River of Grass" - our Florida Everglades.

Most important, the Everglades did not come to this state of neglect by accident. We know exactly who is responsible .. Big Sugar.

And it is time to make the polluters pay!

Your help today is the first step in our effort to make the sugar industry pay its fair share to clean up the mess it's made in the Everglades.

With your help, we plan to have initiatives on the ballot in November that will place a very small one-penny-per-pound fee on sugar produced in the Everglades Agricultural Area. That money will be placed in a trust fund and used to clean up the pollution caused by the people who put it there: the sugar industry.

Now, I don't want you to think I'm beating up on the sugar industry. But please consider these well-documented facts:

In 1960, sugar production in the Everglades Agricultural Area was one-tenth of 1995 levels. But in the early 1970s, Big Sugar bullied Congress in a back room deal to raise Sugar's federally mandated selling price by 60%.

With huge new profit margins as their incentive, the sugar industry exploded ten-fold and diverted and polluted the historical water flows into the park and Florida Bay for their own benefit.

This spelled the beginning of the end for the Everglades and its precious, unique, and fragile ecosystem.

In the face of this tragic outrage, concerned people like you and me have been labeled "extremists" by the Big Sugar Barons.

Big Sugar has poured millions of dollars into lobbying for government programs that benefit the industry. They have stuffed the campaign war chests of politicians who will do the industry's bidding.

Big Sugar spent more than **\$25,000 PER DAY** in 1994 to lobby for their own interests during a three-month period. They have showered politicians with more than **\$12 MILLION** in campaign contributions in the last decade.

Big Sugar has a bottomless pocketbook at taxpayers' expense, that allows it to distort the facts and spread misinformation.

Worse yet, billions of dollars of federal taxpayers' money (that's right, money that came from you and me) is backing up Big Sugar - in the next 20 years, 130 sugar growers will receive \$4 BILLION in federal subsidies while paying only \$200 million to clean up their pollution.

Big Sugar is making you pay to clean up its pollution. Everyone in Florida is forced to pay the cost of cleaning up the sugar industry's pollution. This is most obvious to property taxpayers in the South Florida Water-Management District. Take a look at your property tax bill - it is right there ... sugar used its political clout to make you pay.

That's not fair.

But you can help level the playing field.

Every Floridian who cares about the Everglades should get out their checkbook and make a financial contribution to help win this fight - that's the only way we can show the true grassroots strength of our effort to save Florida's "River of Grass."

You may think that a gift of \$5, \$10, \$15, or \$25 might not make a difference in a fight this big.

Your gift of \$5, for example, will help us send out another five CITIZEN ACTION KITS to concerned Floridians and recruit them to join our crusade to Save Our Everglades. And your gift of \$10 will put another ten KITS into the hands of concerned and caring people like you.

And just as important, please sign your enclosed PETITIONS and return them to our SAVE OUR EVERGLADES campaign headquarters in the enclosed, postage-paid envelope today.

Your PETITIONS will be immediately processed along with hundreds of thousands of others we've collected to put this fight on the Florida ballot this Fall.

**Your signed PETITIONS are the first step in our fight to
MAKE THE POLLUTERS PAY!!!**

Please, I urge you immediately to do all three of your important CITIZEN ACTION STEPS TODAY:

1.) SIGN & RETURN THE ENCLOSED PETITIONS

Help us put the initiatives on the ballot this Fall that will force the polluters to clean up our Everglades!

2.) PUT OUR BUMPER STICKER ON YOUR CAR

Proudly add your name to the growing list of Florida citizens who are fighting to Save Our Everglades!

3.) MAKE A GENEROUS CONTRIBUTION TODAY

Please send a gift of \$5, \$10, \$15, \$25 or more to help fund our CITIZEN CAMPAIGN when you return your petitions!

When you send us your signed PETITIONS and REPLY FORM, we will rush a CITIZEN ACTION KIT to you by return mail so you can take the next step with us in our critical fight to SAVE OUR EVERGLADES.

Thank you for caring and for taking the time to stand up for the Everglades. We are all very grateful for your help.

Fighting for the Glades,

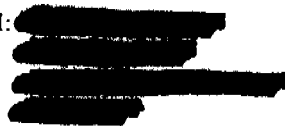


Mary Barley, Chairman
Save Our Everglades

P.S. Your immediate help is critical. PLEASE DO ALL THREE ACTION STEPS TODAY! (1) Sign and return your PETITIONS. (2) Display your BUMPER STICKER. (3) Send a GIFT of \$5, \$10, \$15, \$25 or more to help our CITIZEN CAMPAIGN. If you have any questions, call our special toll-free number 1-888-EVERGLADES (383-7452).

SAVE OUR EVERGLADES

FROM:



RETURN TO: Save Our Everglades
444 Brickell Avenue
Suite 250
Miami, FL 33131-9611

YES! Sign me up to help SAVE OUR EVERGLADES!
I agree the polluters should pay, and I support this effort to
find a fair way to fund a scientific solution that will stop and
eventually reverse some of the damage the sugar industry has
inflicted on the Everglades.

I have carefully read and signed my enclosed petitions, filling
out all necessary information where indicated, and I am
returning it to you for immediate processing.

I am including a contribution with my petitions in the enclosed
postage-paid envelope to help the SAVE OUR EVERGLADES
campaign collect more petitions and win this fight:

\$5 \$10 \$15 \$25 OTHER (\$ _____)

Please make your check payable to: SAVE OUR EVERGLADES.

Paid political advertisement by Save Our Everglades. Contributions to
Save Our Everglades Committee are not tax deductible.

