

IN THE
SUPREME COURT OF FLORIDA
Case Nos. 88,343, 88,344, 88,345

IN RE:

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

ADVISORY OPINION TO THE
ATTORNEY GENERAL
EVERGLADES TRUST FUND
(88,344)

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

INITIAL BRIEF OF
MICCOSUKEE TRIBE OF
INDIANS OF FLORIDA

SONIA ESCOBIO O'DONNELL
Florida Bar No. 250643
Lehtinen, O'Donnell, Vargas &
Reiner, P.A.
770 North Kendall Drive, Suite 303
Miami, Florida 33156
Telephone: (305) 279-1166
Telecopier: (305) 279-1365
Attorneys for Miccosukee Tribe
of Indians of Florida

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF ARGUMENT	5
ARGUMENT	7
I. EACH OF THE PROPOSED AMENDMENTS FULLY COMPLIES WITH THE SINGLE-SUBJECT STANDARD OF ARTICLE XI, SECTION 3	7
II. THE BALLOT SUMMARY AND TITLE OF THE PROPOSED AMENDMENTS CLEARLY, ACCURATELY AND NEUTRALLY INFORM THE VOTERS AS TO THE CHIEF PURPOSE AND EFFECT OF THE INITIATIVES	9
III. THE STATE OF FLORIDA RECOGNIZES THAT THE EVERGLADES ECOSYSTEM IS ENDANGERED AS A RESULT OF EXCESS LEVELS OF PHOSPHOROUS IN THE WATERS FLOWING INTO THE EVERGLADES PROTECTION AREA	11
CONCLUSION	12
CERTIFICATE OF SERVICE	14

TABLE OF CITATIONS

Cases

Advisory Opinion to the Attorney General re Funding for Criminal Justice,
639 So. 2d 972 (Fla. 1994) 10

Advisory Opinion to the Attorney General - Limited Political Terms in Certain Elective Offices,
592 So. 2d 225 (Fla. 1991) 10

Advisory Opinion to the Attorney General Re Stop Early Release of Prisoners,
661 So. 2d 1204 (Fla. 1995) 8

Askew v. Firestone,
421 So. 2d 151 (Fla. 1982) 10

Department of Community Affairs v. Moorman,
664 So. 2d 930 (Fla. 1995) 11

Fine v. Firestone,
448 So. 2d 984 (Fla. 1984) 7

Floridians Against Casino Takeover v. Let's Help Florida,
363 So. 2d 337 (Fla. 1978) 7

In re Advisory Opinion to the Attorney General Re Tax Limitation,
644 So. 2d 486 (Fla. 1994) 7

In re Advisory Opinion to the Attorney General - Save Our Everglades Trust Fund,
636 So. 2d 1336 (Fla. 1994) 10

Smith v. American Airlines,
606 So. 2d 618 (Fla. 1992) 10

Florida Statutes

Section 101.161 5, 9, 10, 11, 12

Section 373.4592 11, 12

Constitutional Provisions

Article II, Section 7 2, 8, 11
Article III, Section 19 3
Article VII, Section 9 2

STATEMENT OF THE CASE AND FACTS

The Court issued an interlocutory order on July 3, 1996 providing for interested persons to file briefs and scheduling oral argument for August 29, 1996. The Miccosukee Tribe of Indians (the "Miccosukee Tribe") is an interested party and files its initial brief in support of the petitions sponsored by Save our Everglades. The Miccosukee Tribe is a federally-recognized Indian Tribe whose members reside within the Florida Everglades. Their landed interests in Miccosukee Indian Country include a federal Indian Reservation, a perpetual lease for use and access to substantial portions of the Water Conservation Areas, a permit for use of, and access to, portions of Everglades National Park, and perpetual use of and access to Big Cypress National Preserve, all of which lie within the Everglades Protection Area or the contiguous waters of Florida Bay. The Miccosukee Tribe has a fundamental, substantial interest in preserving these areas as viable natural environmental systems, and its economic future is dependent upon the environmental preservation of these regions.

The three separate amendments proposed by Save our Everglades are set forth below. First, the ballot title for the proposed amendment in Case No. 88,345 is "Responsibility for Paying Costs of Water Pollution Abatement in the Everglades." The ballot summary for the initiative reads:

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.

The Responsibility for Paying Costs initiative seeks to amend Article II, Section 7 of the Florida Constitution by adding a new subsection (b) to read as follows:

(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 purposes of this subsection, the terms "Everglades Agricultural Area" and "Everglades Protection Area" shall have the meanings as defined in statutes in effect on January 1, 1996.

Second, the ballot title for the proposed amendment in Case No. 88,343 is "Fee on Everglades Sugar Production." The ballot summary for the initiative reads:

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.

The Everglades Sugar Fee initiative seeks to amend Article VII, Section 9 of the Florida Constitution by adding a new subsection (c) to read as follows:

(c) (1) 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.

Third, the ballot title for the proposed amendment in Case No. 88,343 is "Everglades Trust Fund." The ballot summary for the initiative reads:

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.

The Everglades Trust Fund initiative seeks to amend Article X of the Florida Constitution by adding a new section 17 to read as follows:

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.

SUMMARY OF ARGUMENT

Each of the three initiatives sponsored by Save Our Everglades complies with the single subject requirement of Article XI, Section 3. First, the proposed Responsibility for Paying Costs amendment merely provides that those who cause water pollution within the Everglades shall be primarily responsible for paying the costs of abating such pollution. Second, the Fee on Everglades Sugar Production initiative presents a clear and unitary issue to the voters: whether to levy a one cent fee on sugar grown within the Everglades Agricultural Area. And third, the proposed Everglades Trust Fund amendment presents but one issue to the voters: whether to create a trust fund to expend monies for Everglades conservation.

Further, the ballot summary and title for each of the three initiatives complies with the requirements of Section 101.161, Florida Statutes. Technically, the ballot summary and title for each initiative are within the specified word limits. More importantly, the ballot summary and title for each proposed amendment accurately and neutrally explain to the voter the purpose and effect of this amendment.

The Everglades, and the quality of life it sustains for South Floridians, cannot survive much longer. The waters flowing into the Everglades Protection Area contain excessive levels of phosphorous. As the only residents of the Everglades, the Miccosukee Tribe has an interest in preserving the natural environment.

Accordingly, the Court should approve each of the three initiatives sponsored by Save Our Everglades and allow them on the November 1996 election ballot.

ARGUMENT

I. EACH OF THE PROPOSED AMENDMENTS FULLY COMPLIES WITH THE SINGLE-SUBJECT STANDARD OF ARTICLE XI, SECTION 3

The primary test for a proposed initiative is whether it complies with the constitutional single subject rule. Article XI, Section 3 of the Florida Constitution reserves to the people the right to revise or amend their constitution by initiative, "provided that, any such revision or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith."

The purpose of this single subject rule is to prevent "logrolling," the combination of several unrelated proposals, each designed to target a different group of voters. Fine v. Firestone, 448 So. 2d 984, 992 (Fla. 1984); Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2d 337, 339 (Fla. 1978). Logrolling is objectionable because it may compel voters to "accept part of an initiative proposal which they oppose in order to obtain a change in the constitution which they support." In re Advisory Opinion to the Attorney General Re Tax Limitation, 644 So. 2d 486, 490 (Fla. 1994) (quoting Fine, 448 So. 2d at 988).

First, the proposed Responsibility for Paying Costs amendment merely provides that those who cause water pollution within the Everglades shall be primarily responsible for paying the costs of abating such pollution. The initiative usurps no judicial functions and does not make any finding or conclusion as to who those persons or businesses are. Thus, the initiative does not

violate the single subject requirement.

Second, the Fee on Everglades Sugar Production initiative complies with the single subject requirement of Article XI, Section 3 and presents a clear and unitary issue to the voters: whether to levy a one cent fee on sugar grown within the Everglades Agricultural Area. The Fee initiative is different from the Save Our Everglades Trust Fund. The sponsors of this 1996 amendment have carefully responded to the Court's ruling in Save Our Everglades Trust Fund. Clearly, a constitutional concept can be changed to meet the requirements of the single subject rule. As this Court said when considering the Stop Early Release of Prisoners initiative for the second time, "each of the concerns we raised in reviewing the prior proposed amendment has been addressed." Advisory Opinion to the Attorney General Re Stop Early Release of Prisoners (Stop Early Release II), 661 So. 2d 1204, 1206 (Fla. 1995).

Third, the Everglades Trust Fund proposed amendment complies with the single subject requirement of Article XI, Section 3 and presents but one issue to the voters: whether to create a trust fund to expend monies for Everglades conservation. The proposed Everglades Trust Fund initiative exercises a single function in creating a trust fund, vesting its administration in an existing agency, the South Florida Water Management District, to facilitate an existing state policy, namely that set forth in Article II,

Section 7.¹ Because the Everglades Trust Fund initiative responds to the concerns raised in Save Our Everglades Trust Fund, and because the new initiative is limited to a single function, the Court should find that it fully complies with the single subject requirement of Article XI, Section 3 and allow the proposed amendment on the November ballot.

II. THE BALLOT SUMMARY AND TITLE OF THE PROPOSED AMENDMENTS CLEARLY, ACCURATELY AND NEUTRALLY INFORM THE VOTERS AS TO THE CHIEF PURPOSE AND EFFECT OF THE INITIATIVES

In addition to the single subject test, this Court in its advisory opinion examines whether the title and summary of a proposed initiative amendment comply with the statutory requirements of Section 101.161, Florida Statutes. Section 101.161(1), Florida Statutes, provides in relevant part that "[t]he substance of the amendment . . . 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." Interpreting this statute, the Court has stated:

"[S]ection 101.161 requires that the ballot title and summary for a proposed constitutional amendment 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.

In re Advisory Opinion to the Attorney General - Save Our

¹ The South Florida Water Management District is the agency entrusted with administering funds. The Tribe's support of this amendment should not be viewed as the endorsement of the South Florida Water Management District's policies in other matters involving the Everglades.

Everglades Trust Fund, 636 So. 2d 1336, 1341 (Fla. 1994) (quoting Askew v. Firestone, 421 So. 2d 151, 154-55 (Fla. 1982)); Smith v. American Airlines, 606 So. 2d 618, 620-21 (Fla. 1992). It is not necessary to explain every possible detail or ramification of an amendment. Funding for Criminal Justice, 639 So. 2d 972, 974 (Fla. 1994) (citing Limited Political Terms, 592 So. 2d 225, 227 (Fla. 1991)).

First, the chief purpose of the Responsibility for Paying Costs amendment is that those who cause water pollution within the Everglades Agricultural Area or the Everglades Protection Area are primarily responsible for payment of the costs of abating such pollution. The ballot title and summary advises the voters of the chief purpose of the proposed amendment and, therefore, satisfies the requirements of Section 101.161, Florida Statutes.

Second, with respect to the Fee on Everglades Sugar Production amendment, the ballot title and summary adequately inform the voter of the chief purpose of the amendment. All the necessary information about the fee itself, who pays, how much, to whom, for what purpose and for how long is addressed succinctly and clearly, both in the summary and in the title. The proposed Fee on Everglades Sugar Production initiative complies with both the technical and substantive requirements for ballot summary and title of Section 101.161, Florida Statutes.

Third, the Everglades Trust Fund amendment's summary and title describe the trust, advise the voter of the amendment's purpose and the manner in which it will be funded, while avoiding any

inflammatory or misleading language. The result is that the voters will be able to cast an intelligent vote on whether to include the Everglades Trust Fund in their constitution.

For these reasons, the Court should find that the ballot summary and title of these three proposed amendments fully comply with the requirements of Section 101.161(1), Florida Statutes.

III. THE STATE OF FLORIDA RECOGNIZES THAT THE EVERGLADES ECOSYSTEM IS ENDANGERED AS A RESULT OF EXCESS LEVELS OF PHOSPHOROUS IN THE WATERS FLOWING INTO THE EVERGLADES PROTECTION AREA

Article II, Section 7 of the Florida Constitution, provides: "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." Describing this policy, this Court has said that "[t]he clear policy underlying Florida environmental policy is that our society is to be the steward of the natural world, not its unreasoning overlord." Department of Community Affairs v. Moorman, 664 So. 2d 930, 932 (Fla. 1995).

The Legislature determined that Everglades ecological system is of special interest and importance to Florida because it contributes to Florida's water supply, provides recreation, serves as a habitat for diverse species of wildlife and plant life, and it contributes to a robust regional economy in the form of tourism and nature-resource related jobs. Fla. Stat. § 373.4592(1)(a) and (e) (1995). Significantly, the Legislature has also found that "[t]he Everglades ecosystem is endangered as a result of adverse changes in water quality, and in the quantity, distribution, and timing of

flows, and, therefore, must be restored and protected." Fla. Stat. § 373.4592(1)(a) (1995). Specifically, the Legislature determined that "the waters flowing into the Everglades Protection Area contain excessive levels of phosphorous. A reduction in levels of phosphorous will benefit the ecology of the Everglades Protection Area." Fla. Stat. § 373.4592(1)(d) (1995).

The consequences of adverse water quantity and quality conditions affect the Miccosukee Tribe and its members who depend on Everglades' fish and wildlife as primary sources of food. Additionally, hunting, fishing and gathering native plant material in the Everglades area are cultural practices which link present Miccosukee Tribal members to their ancestors.

Fundamental fairness dictates that those who cause pollution in the Everglades contribute to the cleanup. For these reasons, the Miccosukee Tribe supports these amendments.

CONCLUSION

For the reasons stated, it is respectfully submitted that each of the three initiatives sponsored by Save Our Everglades comply with the single subject requirement of Article XI, Section 3. Further, the ballot summary and title for each of the three initiatives comply with the requirements of Section 101.161, Florida Statutes in providing a clear, accurate and neutral statement of the purpose and impact of the proposed amendment.

Accordingly, the Miccosukee Tribe respectfully requests the Court to approve each of the three initiatives sponsored by Save Our Everglades and to allow them on the 1996 election ballot.

Respectfully submitted,

W. Z. Jundley *R*

SONIA ESCOBIO O'DONNELL
Florida Bar No. 250643
Lehtinen, O'Donnell, Vargas &
Reiner, P.A.
770 North Kendall Drive, Suite 303
Miami, Florida 33156
Telephone: (305) 279-1166
Telecopier: (305) 279-1365
Attorneys for Miccosukee Tribe
of Indians of Florida

CERTIFICATE OF SERVICE

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

W. Z. Jundberg
Attorney

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

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

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

Susan L. Turner,
Holland & Knight
P.O. Drawer 810
Tallahassee, FL 32302-0810

John Beranek
Ausley & McMullen
Post Office Box 391
Tallahassee, FL 32303

William B. Killian
Steel, Hector & Davis
777 S. Flagler Drive
W. Palm Beach, FL 33401

Bruce S. Rogow
2441 S.W. 28th Avenue
Ft. Lauderdale, FL 33312