

IN THE
SUPREME COURT OF FLORIDA

Case No. 88,343

IN RE:

ADVISORY OPINION TO THE
ATTORNEY GENERAL
FEE ON EVERGLADES SUGAR PRODUCTION

INITIAL BRIEF OF
SAVE OUR EVERGLADES
COMMITTEE
IN SUPPORT OF INITIATIVE

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STATEMENT OF THE CASE

Pursuant to Article IV, Section 10 of the Florida Constitution and Section 16.061, Florida Statutes (1995), the Attorney General has petitioned this Court for an advisory opinion on the validity of the Fee on Everglades Sugar Production initiative petition.¹ 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 ballot title for the proposed amendment 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.

¹The "Fee on Everglades Sugar Production" initiative was submitted by the Secretary of State to the Attorney General under Section 15.21, Florida Statutes.

(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.

This initial brief is submitted on behalf of the Save Our Everglades Committee, a political committee organized in Florida under Section 106.03, Florida Statutes. The Save Our Everglades Committee is the sponsor of the "Fee on Everglades Sugar Production" initiative now before the Court.

SUMMARY OF ARGUMENT

The Fee on Everglades Sugar Production Initiative is consistent with the letter and spirit of the constitutional provision on initiative amendments. A part of our Constitution since 1968, the initiative process provides Florida citizens with the ability to change policy to reflect the people's will, particularly when no other avenue of change is available. Here, as in the case of the Ethics in Government petition approved by this Court in Weber v. Smathers, 338 So. 2d 819 (Fla. 1976), the public sought to change policy which could not otherwise be enacted due to political resistance. In fact, this petition is an effort to establish equity and ethics in Everglades environmental policy.

This initiative meets the letter of the Constitution's intent to provide voters with a direct and understandable choice required by the single subject rule. The sugar fee initiative presents a unified question to voters: Should the sugar industry pay one cent a pound for ongoing Everglades restoration? The effect of the proposal is the levy of a fee by the South Florida Water Management District, an existing agency already constitutionally authorized to levy taxes, and one already charged with the duty of Everglades restoration. In sum, the proposal follows existing constitutional and statutory environmental policy and seeks a more fair and just funding allocation.

Levying fees or taxes on those who have harmed or benefited

from exploitation or use of a resource is a well accepted policy. Levies on phosphates and the petroleum industry cleanup and restoration have been a part of Florida law for years. In fact, the sugar industry has already begun paying for Everglades cleanup under the Everglades Forever Act.

The current initiative is far narrower than that presented in Save Our Everglades Trust Fund.² The current initiative presents a different question to this Court for two reasons: 1) the actual language is narrower, more specific and changes policy in one limited area (funding); and 2) the circumstances for public consideration have changed since 1994.

The language of the current initiative creates no new governmental entity, draws no administrative boundaries, apportions no blame for problems in the Everglades and sets forth no new governmental policy. Rather, it tracks existing constitutional environmental policy and requires implementation consistent with the law. The sole policy change before the public is the fee on sugar production.

Circumstances are different today than in 1994. Today, there is no question that the Everglades will be restored by a combination of state programs (e.g., the Everglades Forever Act) and federal programs (e.g., the South Florida Ecosystem Restoration Task force, the Comprehensive Review Study of the Central & Southern Florida Project, and the Agricultural Reform and

²See Letter of Attorney General, June 27, 1996, page 5 (distinguishing the present initiative from the Save Our Everglades Trust Fund).

Improvement Act of 1996). Furthermore, the sugar industry is already being taxed under the Everglades Forever Act. Voters are thus not being asked whether to clean up the Everglades and tax sugar. The only question is whether that amount is fair and equitable. That is the question to be decided by this initiative.

This initiative will have a minuscule impact on governmental and constitutional functions. The fee will affect the operations of one local water management district, a district that is already the major state governmental entity focused on Everglades policy.

Opponents of the sugar fee suggest that its impact on the sugar industry is dire. Yet the impact of the initiative on an industry is no part of the single subject test. Should the fee in fact be confiscatory and work an unconstitutional taking, that assertion may be argued and proven in another forum. There is no credible proof of the harm asserted by opponents. In any case, it is an inappropriate argument in the advisory opinion process.

Not only does the Everglades Sugar Fee initiative pose a single question to the voters, it also complies with the statutory requirements for ballot summary and title under Section 101.161, Florida Statutes. First, the amendment complies technically, with the title having fewer than fifteen and the summary fewer than seventy-five words, respectively. Second and more importantly, both the title and summary clearly and accurately inform the voters of the chief purpose of the amendment. There is no emotional or partisan sloganeering, but rather a neutral statement of explanation.

The Court should uphold the Fee on Everglades Sugar Production initiative and allow the voters to decide in November whether to incorporate it into their Constitution.

ARGUMENT

I. THE FEE ON EVERGLADES SUGAR PRODUCTION INITIATIVE COMPLIES WITH THE SPIRIT AND LETTER OF THE CONSTITUTIONAL INITIATIVE REQUIREMENTS AS A UNIFIED AND SPECIFIC GRANT OF POWER TO THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT TO LEVY A FEE TO BE UTILIZED CONSISTENT WITH THE LAW AND THE CONSTITUTION

Article XI, Section 3 of the Florida Constitution reserves to the people of Florida the power to amend or revise 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." This power is consistent with the theory underlying Florida constitutionalism that "[a]ll political power is inherent in the people."³ The proposed Sugar Fee initiative meets both the letter and spirit of Article XI, Section 3. The purpose of the initiative clause is "a recognition of the inherent power of the people to propose and adopt amendments to the Constitution by petition of the people at large, and without the necessity of relying upon public officials to initiate such amendments." Adams v. Gunter, 238 So. 2d 824 (Fla. 1970), 238 So. 2d 824, 835 (Boyd, J., dissenting).

The people, using the careful procedure established by Article XI, Section 3, can amend or revise their Constitution by initiative when it is not otherwise possible to make policy changes. In the case of the Everglades and equitable funding of its restoration,

³Fla. Const. art I, § 1; cf. Weber v. Smathers, 338 So. 2d 819, 821 (1976) (quoting Gray v. Golden, 89 So. 2d 785, 790 (Fla. 1956) ("We are dealing with a constitutional democracy in which sovereignty resides in the people.")).

change to ensure tax equity has been sought from the Legislature and from the Congress, but to no avail. See, e.g., H.R. 2575 & S. 1377, 104th Cong., 2d Sess. (1996); Fla. S.B. 1214 (1996) (unsuccessful Everglades legislation). The people turn to the initiative process, as they did with the Ethics in Government petition upheld by this Court in Weber v. Smathers, because political resistance and special interests closed off all other routes to changing policy. Cf. Weber, 338 So. 2d at 821. The Fee on Everglades Sugar Production seeks to establish equity and ethics in the environmental policy affecting Florida's Everglades.

In its advisory opinion considering the proposed Fee on Everglades Sugar Production initiative, this Court must answer two questions. First, whether the initiative "embrace[s] but one subject and matter directly connected therewith." Florida Constitution Article XI, Section 3. Second, whether the initiative has a ballot summary and title that are legally sufficient under Section 101.161, Florida Statutes. Florida Constitution Article IV, Section 10; Section 16.061, Florida Statutes; see In re Advisory Opinion to the Attorney General - Restricts Laws Related to Discrimination, 632 So. 2d 1018, 1019 (Fla. 1994). This Court has stated that it will not "address the wisdom or merit" of a proposed initiative in the advisory opinion proceedings. Fine v. Firestone, 448 So. 2d 984, 992 (Fla. 1984).

- a. The Fee on Everglades Sugar Production Initiative complies with this Court's interpretation of the single subject requirement of Article XI, Section 3 of the Florida Constitution.

The single subject rule is "a rule of restraint designed to insulate Florida's organic law from precipitous and cataclysmic change."⁴ In re Advisory Opinion to the Attorney General - Save Our Everglades Trust Fund, 636 So. 2d 1336, 1339 (Fla. 1994). The Everglades Sugar Fee amendment complies with the letter and the spirit of this Court's interpretation of Article XI, Section 3. As this Court has explained it, the single subject rule operates to prevent log-rolling, a situation where voters are forced 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 at 490 (quoting Fine, 984 So. 2d at 988); Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2d 337, 339 (Fla. 1978). Log-rolling requires the voters to "cast an all-or-nothing vote on a proposal that affects multiple functions or entities of government." Tax Limitation, 644 So. 2d at 490; Advisory Opinion to the Attorney General - Limited Marine Net Fishing, 620 So. 2d

⁴Article XI, Section 3 has been amended twice. The first, in 1972, allowed initiatives to amend more than one section. Previously, an initiative creating a unicameral legislature was struck as defective because it affected several sections. Adams v. Gunter, 238 So. 2d 824 (Fla. 1970). The 1972 amendment allowed the amendment of several subjects and added the single subject requirement.

Most recently, in 1994, a limited exception from the single subject rule was established for initiatives "limiting the power of government to raise revenue." See Advisory Opinion to the Attorney General Re Tax Limitation, 644 So. 2d 486, 495-96 (Fla. 1994).

997, 999 (Fla. 1993). The single subject requirement is also important because of the lack of a "legislative filtering process" inherent in an initiative amendment that does not allow for public hearing and debate in the drafting of a proposal. Save Our Everglades Trust Fund, 636 So. 2d at 1339 (quoting Fine, 448 So. 2d at 988); Evans v. Firestone, 457 So. 2d 1351, 1355 (Fla. 1984) (Overton, J., concurring).

This Court has considered four principal factors in examining whether an initiative amendment complies with the single subject rule. These factors are: 1) whether the amendment performs or substantially affects multiple governmental functions; 2) the impact on other sections of the constitution; 3) possible collateral impacts of the initiative; and 4) the initiative's internal unity and coherence. See, e.g., Tax Limitation, 644 So. 2d at 490 (functional nature of single subject test and impact on other sections); Restricts Laws Related to Discrimination, 632 So. 2d at 1022 n.6 (Kogan, J., concurring) (collateral impacts); Fine, 448 So. 2d at 990 (internal unity of an amendment). The initiative poses a single question to voters: whether the South Florida Water Management District should levy a fee of one penny per pound on sugar grown in the Everglades Agricultural Area for purposes of Everglades restoration? The initiative vests this authority in an existing governmental entity, already having tax-raising authority, and one already deeply involved in environmental matters in the

Everglades region. Leaving all other functions of government untouched, the Fee on Everglades Sugar Production fully complies with the single subject rule.

Under this Court's single subject jurisprudence, the first issue is whether the initiative performs, alters or substantially affects multiple, distinct governmental functions, as opposed to only a single function. Save Our Everglades Trust Fund, 636 So. 2d at 1340; Restricts Laws Related to Discrimination, 632 So. 2d at 1020; Evans, 457 So. 2d at 1354 (when an amendment "changes more than one government function, it is clearly multi-subject"); Fine, 448 So. 2d at 990. In this analysis, the Court looks to whether the amendment affects a function of more than one branch of government, whether it affects multiple functions of a single branch, or whether it affects a function performed by multiple levels of government, e.g., state, county, municipal. See Advisory Opinion to the Attorney General re Funding for Criminal Justice, 639 So. 2d 972, 973 (Fla. 1994); Save Our Everglades Trust Fund, 636 So. 2d at 1340; Restricts Laws Related to Discrimination, 632 So. 2d at 1020 (citing Fine, 448 So. 2d at 990). Note, however, that an amendment may touch or affect multiple branches of government, so long as this does not work to substantially alter them. Advisory Opinion to the Attorney General - Limited Political Terms in Certain Elective Offices, 592 So. 2d 225, 227 (Fla. 1991). Indeed, as this Court has stated, it is "difficult to conceive of a constitutional amendment that would not affect other aspects of

government to some extent." Advisory Opinion to the Attorney General re Limited Casinos, 644 So. 2d 71, 74 (Fla. 1994) (citing Advisory Opinion to the Attorney General English - The Official Language of Florida, 520 So. 2d 11, 12-13 (Fla. 1988)).

Secondly, the Court will consider whether the amendment will cause substantial impact on other sections of the constitution. Tax Limitation, 644 So. at 490; Restricts Laws Related to Discrimination, 632 So. 2d at 1019; Fine, 448 So. 2d at 990. This Court has stated that it is important to identify parts of the constitution which are substantially affected by the proposed initiative, both to inform the public of the changes and to avoid ambiguity as to the amendment's effects. Tax Limitation, 644 So. 2d at 490; Fine, 448 So. 2d at 989. The Court has noted that the single subject test is a functional, not a locational test, however, and the focus of the Court's review is an amendment's effect on governmental functions. Save Our Everglades Trust Fund, 636 So. 2d at 1340 (quoting Evans, 357 So. 2d at 1354). "[T]he possibility that an amendment might interact with other parts of the Florida Constitution is not sufficient reason to invalidate the proposed amendment." Limited Casinos, 644 So. 2d at 74 (citing English - The Official Language, 520 So. 2d at 12-13 (Fla. 1988)).

Thirdly, this Court has said that it will inquire as to whether an amendment will have multiple unanticipated collateral effects of topics removed from the stated subject of the

initiative. Restricts Laws Related to Discrimination, 632 So. 2d at 1022 n.6 (Kogan, J., concurring); Fine, 448 So. 2d at 995 (McDonald, J., concurring). The existence of such disguised effects would result in voters being asked to vote on amendments "whose consequences may not be readily apparent or desirable to the voters." Restricts Laws Related to Discrimination, 632 So. 2d at 1023 (Kogan, J., concurring). The initiative process is designed to work a limited, single change, and thus cannot be used to substantially alter "part of Florida's legal machinery regardless of the consequences to the rest of our governmental system." Id. at 1022 (Kogan, J., concurring). An amendment's collateral effects cannot be allowed to seriously disrupt other important functions of Florida's government and law. Id. at 1024 (Kogan, J., concurring).

Finally, in examining a proposed constitutional initiative under the single subject rule, the Court looks to see if it has a "logical and natural oneness of purpose." Fine, 448 So. 2d at 990. The "single subject test is functional and not locational." Tax Limitation, 644 So. 2d at 490. In other words, this Court scrutinizes whether an amendment performs more than one function of state government, or affects different functions. Cf. id. ("when an amendment 'changes more than one government function, it is clearly multi-subject'") (quoting Evans, 457 So. 2d at 1354). This Court has explained this standard as being whether the proposed amendment has "a natural relation and connection as component parts of a single dominant plan or scheme. Unity of object and plan is

the universal test." Advisory Opinion to the Governor Re Florida Locally Approved Gaming, 656 So. 2d 1259, 1263 (Fla. 1995) (quoting City of Coral Gables v. Gray, 19 So. 2d 318, 320 (Fla. 1944)).

In sum, the Fee on Everglades Sugar Production initiative meets each of these four factors of the single subject test.

- The Everglades Sugar Fee amendment performs a single legislative function, namely the grant of fee-raising authority to the water management district.
- Its impact on other provisions of the Constitution is nil: the District already has taxing powers, Florida Constitution Article VII, Section 9; the existing state policy with regard to the Everglades is adopted by the language of the initiative; and the right of the Legislature to continue to guide the development of this policy is affirmed.
- There are no unforeseen, substantial collateral impacts on any level of Florida governance: the amendment is neither any more nor any less than it appears.
- The initiative exhibits the "oneness of purpose" and internal coherence that characterizes compliance with the single subject requirement. Fine, 448 So. 2d at 990.

Finally, the Everglades Sugar Fee initiative avoids any logrolling: one question -- and one alone -- is before the voters; should the sugar industry pay a penny per pound towards Everglades restoration. In short, the Fee on Everglades Sugar Production initiative fully complies with the single subject requirement of Article XI, Section 3.

- b. The Fee on Sugar Production initiative works a single, incremental change in authority to the South Florida Water Management District, which currently has constitutional authority to levy taxes

In the Everglades Sugar Fee initiative, this Court addresses an initiative which is narrowly crafted to perform a single legislative function, namely the limited and temporary authorization of a fee levy by an existing state agency. The Everglades Sugar Fee initiative authorizes the South Florida Water Management District to levy a fee of one penny per pound of raw sugar grown in the Everglades Agricultural Area. This specific fee authorization will continue for twenty-five years.

The proposed initiative creates no new governmental entity. That was done in Chapter 373, Florida Statutes. Nor is there any novelty for the Water Management District to have tax-raising power. Article VII, Section 9 of the Florida Constitution authorizes the District to levy ad valorem taxes, as does Section 373.0697, Florida Statutes. The Everglades Forever Act, Section 373.4592(6), Florida Statutes, authorizes the District to levy and collect the Everglades Agricultural Privilege Tax on all agriculture within the Everglades Agricultural Area.⁵

This initiative does not seek to micro-manage funds raised through the sugar fee. Rather, the amendment provides for the proceeds to be used by the District "for purposes of conservation and protection of natural resources and abatement of water

⁵See also St. Johns River Water Management District v. Deseret Ranches of Florida, Inc., 421 So. 2d 1067, 1070 (Fla. 1982) (recognizing the taxing power of water management districts).

pollution in the Everglades Protection Area and the Everglades Agricultural Area." The language in this clause is taken directly from Article II, Section 7 of the Florida Constitution, which announces state policy in the area of natural resources and scenic beauty.

The Everglades Sugar Fee amendment works no change in the existing state policy regarding environmental preservation. That policy, explicitly referenced in the initiative, is set forth in Article II, Section 7 of the Florida Constitution, which states: "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). With regard to the Everglades, the Legislature has stated that the "Everglades ecological system is endangered as a result of adverse changes in water quality, and in the quantity, distribution, and timing of flows, and therefore, must be restored and protected." Section 373.4592, Florida Statutes (1995).

The South Florida Water Management District already has important environmental responsibilities with regard to the Everglades ecosystem. The Legislature has given the District a vital role in the restoration of the Everglades in establishing the

Everglades Construction Project. Section 373.4592(4), Florida Statutes. Congress has also recognized the District's important role in the Everglades as local sponsor of the Central and Southern Florida Project. See, e.g., 16 U.S.C. § 410r-8 (giving the District a consultative role in the modification of water deliveries to Everglades National Park).

The Fee on Everglades Sugar Production initiative does not establish some new fully autonomous or irresponsible branch of state government. The initiative does not expand or alter the District's existing authority beyond the fee levy, and the initiative scrupulously avoids intrusion into functions other than the actual fee levy. The District must use the funds raised through the fee in a manner "consistent with statutory law." The District's discretion is thus limited within the bounds of state policy, and statutory control and supervision over agency policy-making are preserved.

The areas within which the district may expend the funds raised, namely the Everglades Protection Area and the Everglades Agricultural Area, have been established by law. Sections 373.4592(2)(h) & 373.4592(15), Florida Statutes. This Court has upheld clearly defined geographical areas in other initiatives. Thus, in Limited Casinos, the Court allowed an initiative which provided for casino gambling in Duval, Escambia, Hillsborough, Lee, Orange, Palm Beach, Pinellas, Broward and Dade Counties only, and specifying where in Dade Counties casinos would be allowed.

Limited Casinos, 644 So. 2d at 73. Likewise, in Floridians Against Casino Takeover, the Court allowed an initiative that provided for casinos within a minutely defined, oceanside area of Dade and Broward counties. Floridians, 363 So. 2d at 338.

The Everglades Sugar Fee amendment is comparable to other initiatives upheld by this Court which were designed both to raise funds and give guidance as to the manner in which they should be spent. The effect of the fee on the district is comparable to that foreseen in the "Criminal Justice Trust Fund," where the Court said that "[t]he legislature's discretion in allocating the funds is limited only by the provision that the funds must be used for criminal justice purposes . . . Further the amendment does not augment or detract from any of the legislative powers enumerated in the constitution." Funding for Criminal Justice, 639 So. 2d at 973-74. The sole effect of the Fee on Everglades Sugar Production initiative amendment is to give additional resources to an existing and vital governmental entity to carry out existing duties in the area of "conservation and protection of natural resources and abatement of water pollution." Inasmuch as the Fee initiative does establish parameters for the use of the funds raised from the Everglades Sugar Fee, this is "matter directly connected" with the fee itself, necessary to demonstrate that a rational basis exists for its existence, and thus no separate subject.

Indeed, the connection between the target of the fee, (sugar production), and the general purposes of the funds raised, (environmental protection and pollution cleanup), is much stronger

than other initiatives approved by this Court.⁶ Certainly, there is a more logical link between sugar production and environmental cleanup than between the state lottery and education, or between casino gambling and education or law enforcement. See Carroll v. Firestone, 497 So. 2d 1204, 1205-06 (Fla. 1986) (upholding the lottery amendment); Floridians, 363 So. 2d at 338 (upholding a casino amendment with taxes to be used for "support and maintenance of the free public schools and local law enforcement"). Importantly, the Fee on Everglades Sugar Production initiative does not direct the actual expenditure of funds, but merely provides that they should be expended for the existing, constitutionally and statutorily established policies of Everglades cleanup and restoration. In short, the narrow provisions of the Everglades Sugar Fee amendment have a "natural relation and connection as component parts or aspects of a single dominant plan or scheme." Limited Marine Net Fishing, 620 So. 2d at 999 (quoting Fine, 448 So. 2d at 990).

- c. **The fee levied pursuant to the Fee on Everglades Sugar Production initiative amendment is a typical excise or severance tax or fee**

The Everglades Sugar Fee imposed by the present initiative is a familiar mechanism in Florida law. Indeed, the fee is analogous to excise taxes imposed by this State on alcohol or cigarettes. Florida Statutes, Sections 561.121; 563.05 (beer); 563.06 (wine);

⁶In the Everglades Forever Act, the Legislature stated: "The Legislature finds that 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).

ch. 210 (cigarettes). There is, however, no need to equate a fee on sugar with such "sin taxes," for Florida also places similar excise taxes on the citrus products for which Florida agriculture is justly renowned. Section 601.15, Florida Statutes. A further analogy to the present fee would be the severance taxes placed on oil and gas, sulfur, phosphates and other minerals produced in Florida. Florida Statute ch. 211.⁷ Existing state policy clearly supports levies on entities which have either used, exploited or consumed natural resources.

Whether the fee imposed by this initiative is fair or equitable is not before the Court in this proceeding. Fine, 448 So. 2d at 992. The sponsors of this amendment believe that the tax is indeed fair and rightly divides the burden of Everglades restoration between the public as a whole and a single heavily-subsidized industry that has benefitted from using resources within the Everglades Agricultural Area. Opponents of this amendment may well disagree and will raise constitutional arguments. This Court should reject such attempted diversions. Tax Limitation, 644 So. 2d at 489 ("This Court does not have the authority or responsibility to rule on the merits or the wisdom of these proposed amendments . . ."); Restricts Laws Related to Discrimination, 632 So. 2d at 1019 n.1 (finding that the Court lacked jurisdiction to address facial constitutional issues in an

⁷See also Fla. Stat. § 376.3071 (creating the Inland Protection Trust Fund, funded by excise taxes on petroleum products produced in or imported into Florida, and created to clean up contamination by petroleum leaking from underground storage tanks).

advisory opinion proceeding for a proposed initiative); In re Advisory Opinion to the Attorney General English - The Official Language of Florida, 520 So. 2d 11, 12-13 (Fla. 1988) (declining to examine the initiative's constitutional implications and finding that "[i]t may be that, if passed, the amendment could have broad ramifications. Yet, on its face it deals with only one subject."). The opponents of the Everglades Sugar Fee may choose to argue these matters in the proper forum in due course. See Florida League of Cities v. Smith, 607 So. 2d 397, 399 (Fla. 1992).

d. The Fee on Everglades Sugar Production initiative responds to the concerns of the Court in the 1994 Save Our Everglades Trust Fund amendment.

The concept of a fee levy on Everglades sugar came before this Court in 1994 with the Save Our Everglades Trust Fund initiative. See Save Our Everglades Trust Fund, 636 So. 2d at 1341. The Court found that the 1994 initiative violated the single subject requirement inasmuch as it combined the legislative functions of imposing a fee, creating a trust fund, directing the funds raised to Everglades restoration and drawing boundaries for the trust's activities, executive functions of administering the trust, and the judicial function of assessing responsibility for pollution in the Everglades. Id. Learning from this Court's 1994 opinion, the sponsors of this initiative propose a series of three limited and narrowly drawn amendments distinct from the 1994 Save Our Everglades proposal. Though the amendments are all related in some way to a general theme of Everglades conservation, each of these amendments is separate, discrete and freestanding. Each amendment

itself complies with the single subject requirement of Article XI, Section 3. The voters are free to choose one or more and reject the others. Each proposal offers different policy options.

One proposed initiative amendment is the Fee on Everglades Sugar Production initiative. As its title suggests, this initiative deals solely with the levying of a one cent per pound fee on sugar grown within the Everglades Agricultural Area. Cf. id. at 1340. This amendment goes no further than that single function. The bases for consideration of the proposed amendment are completely different from the bases for consideration of the 1994 Save Our Everglades amendment. Two overall reasons are: 1) the language and policy of the instant initiative is very narrowly focused and restricts itself to the funding mechanism; and 2) the circumstances related to the Everglades, its restoration and the sugar industry's role have changed dramatically since 1994.

The Fee on Everglades Sugar Production creates no new powerful executive or autonomous governmental entity "with vast executive powers." Save Our Everglades Trust Fund, 636 So. 2d at 1340. Rather, the Fee initiative authorizes an existing local agency, the South Florida Water Management District, already charged with important environmental responsibilities, to levy the fee for a period of twenty-five years. Cf. id. However, the organic statutes creating and defining the water management district are unaltered, and the agency is required to expend the revenues "consistent with statutory law," thus preserving legislative

control over agency policy-making.⁸ Significantly, the South Florida Water Management District is already constitutionally authorized to levy taxes.⁹

Unlike the unsuccessful Save Our Everglades Trust Fund, the Everglades Sugar Fee draws no new administrative boundaries, nor does it grant any entity power to draw such. Rather, the Fee initiative adopts existing statutorily defined regions, namely the Everglades Agricultural Area and the Everglades Protection Area, both of which are established and defined by Section 373.4592(2)(h) and Section 373.4592(15), Florida Statutes. Cf. Save Our Everglades Trust Fund, 636 So. 2d at 1340 ("Because of the imprecise description of the Everglades Ecosystem, the trustees would be required to set the boundaries within which the fee can be levied, and are authorized to redefine these boundaries. The exercise of these traditionally legislative functions is not even subject to the constitutional check of executive branch veto."). Unlike the area covered by the Save Our Everglades Trust Fund, the administrators of the Everglades Sugar Fee may not alter or amend the areas the legislature has already defined as agriculturally and environmentally significant.

⁸The statutes defining the role of the various water management districts are found in Chapter 373, Florida Statutes.

⁹**Fla. Const.** art. VII, § 9; cf. Fla. Stat. §§ 373.0697 & 373.4592(6) (authorizing the District to collect the Everglades Agricultural Privilege Tax).

The administrative agency is not given unfettered discretion or "complete autonomy" in the expenditure of the funds raised. Cf. Save Our Everglades Trust Fund, 636 So. 2d at 1340. Beyond the constitutional purposes of "conservation and protection of natural resources and abatement of water pollution," the South Florida Water Management District is instructed to expend the funds raised through the Everglades Sugar Fee, "consistent with statutory law," thus preserving the Legislature's role in making, and control over implementing, state environmental policy. Unlike the trustees of the failed Save Our Everglades Trust Fund, the water management district will use their existing statutory authority to carry out existing constitutional and statutory policy using the revenues raised from levying the fee.¹⁰

Furthermore, the Fee on Everglades Sugar Production initiative does not assign responsibility or blame for environmental problems in the Everglades. There are no "factual findings and determinations of liability and damages." Cf. Save Our Everglades Trust Fund, 636 So. 2d at 1340. Nowhere does this amendment "render[] a judgment of wrongdoing and de facto liability" on any person or party. Cf. id. The Fee on Everglades Sugar Production usurps no judicial functions.

¹⁰Cf. Save Our Everglades Trust Fund, 636 So. 2d at 1340 (criticizing the vast discretionary powers given to the trustees to make policy with regard to "pollution cleanup and control," and noting that, "because various other executive agencies have jurisdiction in this area, the trustees would impinge on the powers of existing agencies").

The proposed Everglades Sugar Fee will have no collateral impacts on any level of government in this state, or on any executive, legislative or judicial functions. Cf. Restricts Laws Related to Discrimination, 632 So. 2d at 1022 (Kogan, J., concurring) (possible effects of initiative could include loss of federal funds, sanctions or punitive suits against the state); Florida League of Cities, 607 So. 2d at 399 (possible effects of initiative included partial repeal of Florida's homestead exemption). Where the proposed amendment touches other branches or functions, it does not "substantially alter or perform the functions of multiple branches." Save Our Everglades Trust Fund, 636 So. 2d at 1340 (citing Advisory Opinion to the Attorney General - Limited Political Terms in Certain Elective Offices, 592 So. 2d 225, 227 (Fla. 1991)). As this Court has stated, it is "difficult to conceive of a constitutional amendment that would not affect other aspects of government to some extent. . . . [T]he possibility that an amendment might interact with other parts of the Florida Constitution is not sufficient reason to invalidate the proposed amendment." Limited Casinos, 644 So. 2d at 74 (Fla. 1994) (citing English - The Official Language, 520 So. 2d at 12-13 (Fla. 1988)).

The Fee on Everglades Sugar Production initiative presents a single question for the voter, namely, whether to levy a fee on sugar grown within the Everglades Agricultural Area. The question is not to protect the environment or cleanup pollution, for that is existing state policy and will be unchanged by this amendment. Likewise, existing state policy is that the Everglades should be

restored.¹¹ The question is not the role of the water management district, for that also will not change with this amendment. The question is not even whether sugar should bear a portion of the cleanup costs for the Everglades, for that also has been decided.¹² The single issue before voters is the amount sugar should contribute towards Everglades restoration. The Fee on Everglades Sugar Production amendment should be sent for the voters to decide this single question of the levying of a temporary fee on Everglades sugar.

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).

As it comes before the Court in 1996, the Fee on Everglades Sugar Production initiative exhibits the requisite "logical and natural oneness of purpose" and meets this Court's standards for the single subject test. Fine, 448 So. 2d at 990. The Attorney

¹¹**Fla. Stat.** § 373.4592(1)(d) ("It is the intent of the Legislature to promote Everglades restoration and protection").

¹²See, e.g., Fla. Stat. § 373.4592(6) (Everglades Agricultural Privilege Tax).

General, in his letter to this Court dated June 27, 1996 requesting this advisory opinion, distinguished the Everglades Sugar Fee initiative from the Save Our Everglades amendment and recognized that this initiative "would not . . . raise the same concerns as the earlier proposed initiative." Because each of the concerns raised in Save Our Everglades Trust Fund has been fully addressed, and the new initiative is limited to a single function, the Court should find that the Everglades Sugar Fee initiative fully complies with the single subject requirement of Article XI, Section 3 and allow the initiative on the November ballot.

e. The Three Petition Format is Permissible.

The Save Our Everglades Committee anticipates an argument by the petition's opponents that the multiple form, three-petition format is invalid. This argument has no merit. In 1994, the Tax Cap Committee circulated four petitions that were joined together. This format was challenged in the course of the advisory opinion process. The challengers contended that the union of the petitions violated the single subject rule and misled the voters. This Court denied the challengers' writ of mandamus and suggested that "this is a question the Legislature should resolve by appropriate statutory provisions, and that the relief requested in the mandamus is not a matter within the mandated authority of the Secretary of State." In re Advisory Opinion to the Attorney General re Tax Limitation, 644 So. 2d 486, 497 (Fla. 1994). In 1996 the Legislature considered a bill, which would have prohibited joint petitions. H.B. 101. The bill died in committee.

The Supreme Court, at least implicitly, considers the three-petition format to be a matter of legislative, rather than judicial, concern. The legislature, in turn, has refused to prohibit this format. It is, therefore, permissible under Florida law.

II. THE FEE ON EVERGLADES SUGAR PRODUCTION INITIATIVE FAIRLY AND ACCURATELY SETS FORTH THE SUBSTANCE OF THE AMENDMENT IN THE BALLOT SUMMARY AND TITLE

In the advisory opinion proceeding under Article IV, Section 10, the Court also examines the ballot title and summary for compliance with Section 101.161, Florida Statutes. The substance of an amendment is to be articulated in an "explanatory statement, not exceeding seventy-five words in length, of the chief purpose." Florida Statutes § 101.161(1) (1995). There must also be a ballot title of not more than fifteen words in length "by which the measure is commonly referred to or spoken of." *Id.* The purpose of this Court's review is to ensure that "the electorate is advised of the true meaning, and ramifications of an amendment." Tax Limitation, 644 So. 2d at 490; Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982). A voter "must be able to comprehend the sweep of each proposal from a fair notification in the proposition itself that it is neither less nor more extensive than it appears to be." Askew, 421 So. 2d at 155 (quoting Smathers v. Smith, 338 So. 2d 825, 829 (Fla. 1976)).

This Court has required the summary and ballot title of a proposed initiative to be: (1) "accurate and informative," Smith v. American Airlines, 606 So. 2d 618, 621 (Fla. 1992); and (2)

"objective and free from political rhetoric," sloganeering or emotional language. Tax Limitation, 644 So. 2d at 490; cf. Save Our Everglades Trust Fund, 636 So. 2d at 1341; Evans, 457 So. 2d at 1355.

Opponents will likely argue that certain typographical errors in the ballot summary render this initiative invalid.¹³ This argument has been expressly rejected in other jurisdictions. Absent a material change in the petition's message, typos do not affect the validity of the petitions. Although this specific issue has never occurred in Florida, other courts have been faced with similar issues and have held that petitions with insignificant typos were still in substantial compliance with the procedures and, thus, valid. See Assembly of the State of California v. Deuknejian, 639 P. 2d 939 (Ca. 1982); Barnes v. Paulus, 588 P. 2d 1084 (Or. 1978); and Barnes v. Paulus, 588 P. 2d 1120 (Or. App. 1978). The Florida Supreme Court has also determined that what is required in analogous circumstances is substantial compliance. See

¹³The initiative petition entitled "Responsibility for Paying Costs of Water Pollution Abatement in the Everglades" contains no typographical errors in its summary or text when compared with the language approved by the Secretary of State. The initiative petition entitled "Fee on Everglades Sugar Production" that was circulated for signatures contains the word "as" between "sugar" and "grown" in the summary. The initiative petition which was submitted to the Secretary of State did not contain "as" between "Sugar" and "grown." The initiative petition entitled "Everglades Trust Fund" circulated for signatures contains a comma and quotation mark in subsection (d) of the text and the word "of" as the fourth word in the final subsection of the text. The initiative petition submitted to the Secretary of State did not contain the comma and quotation mark in subsection (d) nor the word "of" as the fourth word in the final subsection. The initiative submitted to the Secretary of State contained the word "or" as the fourth word in the final subsection of the text.

Boardman v. Esteva, 323 So. 2d 259 (Fla. 1975), cert. denied 425 U.S. 967 (1976). Clearly, this typo is not the product of fraud, gross negligence or intentional wrongdoing, and the irregularity will not adversely affect the sanctity of the ballot and the integrity of the election. The change in this petition is inadvertent, the meaning has not been changed and voters have not been misled.

Second, the proposed Fee on Everglades Sugar Production initiative complies with the technical requirements for ballot summary and title. The amendment also complies with the substantive requirements of Section 101.161, Florida Statutes. The title is informative, but neutrally so. There is no inconsistency between the title and the proposed amendment. Cf. Save Our Everglades Trust Fund, 636 So. 2d at 1341 (noting that the text of the SOE initiative stated that its purpose was to "restore" the Everglades, while the "emotional language of the title" might mislead voters that the purpose was to "save" the Everglades). 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.

Third, unlike the Save Our Everglades Trust Fund initiative, the summary and title of the proposed Fee amendment do not impose blame or guilt on any person or industry, do not encourage unreasonable (or even reasonable) fears or hopes as to the extent, purpose or effect of the amendment, or in any way indulge in "political rhetoric" or "subjective evaluation of special impact."

Save Our Everglades Trust Fund, 636 So. 2d at 1341-42 (quoting Evans, 457 So. 2d at 1355).

Finally, the Fee on Everglades Sugar Production initiative does not "fly under false colors," but honestly and boldly proclaims its true nature, its limitations and effects. Askew, 421 So. 2d at 156. Because the ballot summary and title accurately and neutrally inform the voters of the chief purpose, and give notice as to the effect of the proposed Fee on Everglades Sugar Production initiative, this Court should find that the amendment complies with the statutory requirements of Section 101.161, Florida Statutes.

CONCLUSION

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.

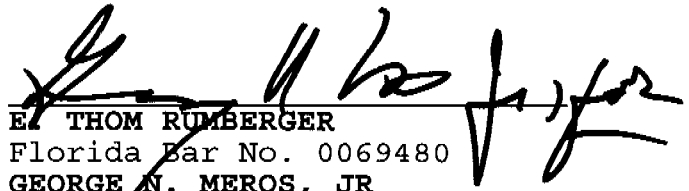
The ballot summary and title of the Everglades Sugar Fee initiative comply with the requirements of Section 101.161, Florida Statutes in providing a clear, accurate and neutral statement of the purpose and impact of the proposed amendment.

Accordingly, the sponsors of the Fee on Everglades Sugar Production initiative request that the Court approve this initiative and allow it on the 1996 election ballot.

REQUEST FOR ORAL ARGUMENT

SOE, as an interested party, requests oral argument in this proceeding.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy has been furnished by the
U.S. Mail, to:

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Tallahassee, Florida 32399-1963

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SUSAN L. TURNER
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Tallahassee, Florida 32302-0810

this 23rd day of July, 1996.



William L. Sundberg

APPENDIX

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 104.165 - 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 _____

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APPENDIX
 A
 ALL-STATE® INTERNATIONAL

Serial No. 96-03
 Date App. 3/26/96 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 moneys 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 104.155 - 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 _____

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Serial No. 96-02
 Date App. 3/23/96 3-26-96
 OFFICIAL USE ONLY

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 _____

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