IN THE SUPREME COURT
STATE OF FLORIDA

CASE NOS. 88,343, 88,344, 88,345
(CONSOLIDATED FOR ORAL ARGUMENT)

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

IN RE: ADVISORY OPINION TO THE ATTORNEY GENERAL - EVERGLADES TRUST FUND (88,344)

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

INITIAL BRIEF OF INTERESTED PARTY FLORIDA TAXWATCH, INC. REQUESTING THAT THE PROPOSED AMENDMENTS BE STRICKEN FROM THE BALLOT

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STATEMENT OF THE CASE, FACTS AND INTERESTS OF FLORIDA TAXWATCH, INC. IN THIS PROCEEDING

By order rendered July 3, 1996, this Court consolidated the following three Advisory Opinion cases for oral argument and directed that interested parties file their initial briefs on or before July 23, 1996: Fee on Everglades Sugar Production, Case No. 88,343; Everglades Trust Fund, Case No. 88,344; and Responsibility for Paying Costs of Water Pollution Abatement in the Everglades, Case No. 88,345.\[1]

Florida TaxWatch has an abiding interest in both the substance of these three proposed amendments and the process which brings them before the Court. Florida TaxWatch, a private, non-profit, non-partisan research institute supported entirely by voluntary, tax-deductible membership contributions and philanthropic foundation grants, is a statewide organization entirely devoted to state taxing and spending issues in Florida. It has a widely recognized and deserved reputation as a watchdog of the citizenry's hard-earned tax dollars, and is supported by all types of taxpayers -- homeowners, small businesses, large corporations, professionals, labor unions, associations, individuals, and philanthropic foundations.

Without lobbying, Florida TaxWatch works diligently to insure rational fiscal and taxation policies, to build government efficiency, and to promote responsible, cost-effective improvements in government that add value and benefit to the State's taxpayers. As such, it has a vital interest in these three proposed constitutional amendments which, if approved by this Court and subsequently ratified by the electorate, would have significant and lasting adverse impacts on the Florida Constitution's existing scheme of government, particularly as they relate to taxation and

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[1] Florida TaxWatch has consolidated its argument on these three cases in this brief.

spending policies.

Accordingly, pursuant to Article IV, section 10 of the Florida Constitution, which grants "interested persons" the right to be heard on questions presented by such initiative petitions, Florida TaxWatch submits this initial brief in opposition to these three proposed constitutional amendments.

These cases had been presented to the Court by the Florida Attorney General pursuant to the provisions of Article IV, section 10 of the Florida Constitution, and section 16.061, Florida Statutes, by his letter dated June 27, 1996, which aptly and succinctly describes how these cases have found their way to the Court:

> The Court has now received three interrelated initiative petitions after having reviewed and rejected an earlier petition in 1994. That petition sought to amend the Florida Constitution by creating a trust to restore the Everglades funded by a fee on raw sugar. As described in the summary of that petition, it would have
>
> > Create[d] the Save Our Everglades Trust to restore the Everglades for future generations. Directs the sugarcane industry, which polluted the Everglades, to help pay to clean up pollution and restore clean water supply. Funds the Trust for twenty-five years with a fee on raw sugar from sugarcane grown in the Everglades Ecosystem of one cent per pound, indexed for inflation. Florida citizens trustees will control the Trust.
>
> The Court in Advisory Opinion to the Attorney General - Save Our Everglades, 636 So. 2d 1336, 1341 (Fla. 1994), concluded that the 1994 petition violated both the single subject requirement and the ballot title and summary requirements specified in section 101.161, Florida Statutes. The drafters now present three separate petitions seeking to avoid the problems encountered in the 1994 petition. [e.s.]

Insofar as Florida TaxWatch is concerned, the relevant "facts" underlying this proceeding are found in the text of the three proposed amendments. They are therefore set forth verbatim below.

The full text of the first proposed amendment, Fee on Everglades Sugar Production, Case No. 88,343, provides:

(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.

The full text of the second proposed amendment, Everglades Trust Fund, Case No. 88,344, provides:

(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.

The full text of the final proposal, Responsibility for Paying Costs of Water Pollution Abatement in the Everglades, Case No. 88,345, provides:

(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 test, 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.

SUMMARY OF ARGUMENT

ISSUE I. THE PROPOSED "FEE ON EVERGLADES SUGAR PRODUCTION" VIOLATES ARTICLE XI, SECTION 3, OF THE FLORIDA CONSTITUTION, AND SECTION 101.161(1), FLORIDA STATUTES AND SHOULD BE STRICKEN FROM THE BALLOT.

The proposed "Fee on Everglades Sugar Production" constitutional amendment impermissibly combines the goal of cleaning up the Everglades with the goal of making Florida's sugar industry pay for that cleanup. It is therefore guilty of the same "log rolling" previously condemned by this Court in an earlier attempt by the same proponents to accomplish the same ends. See In Re: Advisory Opinion to the Attorney General - Save Our Everglades, 636 So. 2d 1336, 1341 (Fla. 1994) (Save Our Everglades I). This proposal also impermissibly implicates the functions of the legislative, executive, and judicial branches. See Evans v. Firestone, 457 So. 2d 1351 (Fla. 1984). Furthermore, it utterly fails to "identify the articles or sections of the Constitution substantially amended." Fine v. Firestone, 448 So. 2d 984, 989 (Fla. 1984).

It is also violative of the title and ballot summary requirements of section 101.161, Florida Statutes, because it misleadingly incorporates by reference Article II, section 7 of the Florida Constitution, a section that is proposed to be amended by the related amendment entitled "Responsibility for Paying Costs of the Water Pollution Abatement in the Everglades." It is therefore unclear as to whether it is referring to the current version of Article II, section 7, or to a version of Article II, section 7, that is to be amended by this related constitutional initiative. It implies in its title that it is a fee on sugar production in the natural, undeveloped "Everglades" when the amendatory language actually applies to sugar production in the Everglades Agricultural Area ("EAA"), a wholly separate area. It also attempts to "fly under false colors," Askew v.

Firestone, 421 So. 2d 151, 156 (Fla. 1982) by calling itself a "fee" when it is really a "tax."

ISSUE II. THE PROPOSED "EVERGLADES TRUST FUND" AMENDMENT IS ALSO VIOLATIVE OF ARTICLE XI, SECTION 3, OF THE FLORIDA CONSTITUTION, AND SECTION 101.161(1), FLORIDA STATUTES AND SHOULD THEREFORE BE STRICKEN FROM THE BALLOT.

The proposed amendment entitled "Everglades Trust Fund," by intruding into the legislative, executive, and judicial functions of government in much the same fashion as did the substantially similar trust fund proposal invalidated in Save Our Everglades I, violates the Florida Constitution's single-subject requirement. It is also misleading, and thus violative of section 101.161(1), Florida Statutes, in that it would lull a voter into believing that it would encompass all conservation, protection and pollution abatement efforts in the Everglades, whereas the text affirmatively states that the purpose of the Everglades Trust Fund is merely to "assist" in such matters. See Save Our Everglades I, at 1394.

ISSUE III. THE PROPOSED "RESPONSIBILITY FOR PAYING COSTS OF WATER POLLUTION ABATEMENT IN THE EVERGLADES" AMENDMENT IS ALSO VIOLATIVE OF ARTICLE XI, SECTION 3, OF THE FLORIDA CONSTITUTION, AND SECTION 101.161(1), FLORIDA STATUTES AND SHOULD THEREFORE BE STRICKEN FROM THE BALLOT.

The "Responsibility for Paying Costs of the Water Pollution Abatement in the Everglades" initiative unconstitutionally implicates the legislative function, by intruding upon the legislature's function of determining public policy, the judicial function, by making factual determinations regarding the existence of a water pollution problem and a legal determination of who is responsible for that pollution, and the executive function, by making determinations and/or assumptions regarding what constitutes "abatement" of water pollution and where such abatement is needed. See Save Our Everglades I at 1340. Furthermore, it fails to "identify the articles or

sections of the Constitution substantially amended." Fine v. Firestone, 448 So. 2d at 989.

The title and summary are also misleading, and thus violative of section 101.161(1), Florida Statutes, because of an obvious discrepancy between the text of the summary, which narrowly limits responsibility for the costs of pollution abatement to "those in the Everglades Agricultural Area who cause water pollution," while the text of the proposed amendment more broadly and differently imposes liability on "those who cause water pollution within the Everglades Agricultural Area or the Everglades Protection Area." It is also misleading in that its title necessarily implies that it is allocating full responsibility for all costs to abate Everglades water pollution, when, in fact, the summary and actual text reveal that it deals only with allocating primary responsibility.

INTRODUCTION TO ARGUMENT

A. Single-subject Requirement of Article XI, Section 3, of the Florida Constitution

The Court is undoubtedly acquainted with the extensive case law construing Article XI, section 3 of the Florida Constitution. In relevant part, that constitutional provision states:

> The power to propose the revision or amendment of any portion of this constitution by initiative is reserved to the people, provided that, any such revision or amendment shall embrace but one subject and matter directly connected therewith. [e.s.]

The underscored statement makes plain the essential limitation on the scope of this initiative power: It is a restraint imposed by all of the people of the state, through their duly adopted Constitution, upon those persons in the state who wish to propose an amendment to that Constitution. Accordingly, as a matter of constitutional principle citizen proposals such as those at issue here differ from amendments proposed by the Florida Legislature because citizen proposals do not "proceed through legislative debate and public hearing" and do not allow for "change in the content of any (proposal) before its adoption." Fine v. Firestone, 448 So. 2d 984, 988 (Fla. 1984). Rigorous scrutiny by this Court is therefore required.

Fine v. Firestone also sets forth, perhaps better than any other case, the essential legal principles by which the single-subject requirement of Article XI, section 3 is applied to a citizen's initiative. The primary purpose, as enunciated in Fine v. Firestone, is to prevent "log rolling," by combining multiple provisions in one proposal in order to attract a sufficient number of votes for passage and "to protect against multiple precipitous changes in our constitution." 448 So. 2d at 988.

Second, the proposed measure must have "a logical and natural oneness of purpose." Id.

at 990. Third, "an initiative proposal should identify the articles or sections of the Constitution substantially affected. This is necessary for the public to be able to comprehend the contemplated changes in the Constitution and to avoid leaving to this Court the responsibility of interpreting the initiative proposal to determine what sections and articles are substantially affected by the proposal." Id. at 989.

Fourth, the single-subject limitation imposes "a rational as opposed to a locational restraint on the range of authorized amendments." Id. at 990. In other words, it may affect more than one article or section of the Constitution, but it may not apply to more than one function of governmental power, i.e., it cannot affect simultaneously legislative, judicial, or the executive branches of government.

B. The Ballot Title and Summary Requirements of Section 101.161(1), Florida Statutes.

Section 101.161(1), Florida Statutes, generally sets forth the legal requirements applicable to ballot initiative titles and summaries. Among the statute's criteria directly applicable to this case, the "substance" of the measure must be expressed; the language must be "clear" and "unambiguous," the measure must have an "explanatory statement," and the explanatory statement must set forth the "chief purpose" of the amendment.

These statutory requirements have been fleshed in several of this Court's decisions, most notably Askew v. Firestone, 421 So. 2d 151 (Fla. 1982). This decision teaches that "[t]he ballot must be fair and advise the voter sufficiently to enable him intelligently to cast his ballot," 421 So. 2d at 154; that the proposal "must stand on its own merits and not be disguised as something else," 421 So. 2d at 156; that the "proposed amendment cannot fly under false colors," id.; that "[t]he burden of informing the public should not fall only on the press and the opponents of the

measure -- the ballot title and summary must do this," id.; and that there be a "clear and unambiguous explanation of the measure's chief purpose." Id.

C. All Three Proposed Amendments violate both Article XI, Section 3 of the Florida Constitution, and section 101.161(1), Florida Statutes.

Florida TaxWatch will demonstrate in the following sections of this brief that all three proposed ballot initiatives fail to pass muster on either the single-subject requirement of Article XI, section 3, of the Florida Constitution or the title and ballot summary statutory requirements of section 101.161(1), Florida Statutes. However, one really need only look to In Re: Advisory Opinion to the Attorney General - Save Our Everglades, 636 So. 2d 1336 (Fla. 1994) (Save Our Everglades - I) to find a sufficient rationale and justification for concluding that all three initiatives are violative of these governing constitutional and statutory provisions.

ARGUMENT

ISSUE I. THE PROPOSED "FEE ON EVERGLADES SUGAR PRODUCTION" VIOLATES ARTICLE XI, SECTION 3, OF THE FLORIDA CONSTITUTION, AND SECTION 101.161(1), FLORIDA STATUTES AND SHOULD BE STRICKEN FROM THE BALLOT.

There is an old saying to the effect that "those who do not learn from the past are condemned to repeat it." That saying applies with particular force to the proponents of the proposed "Fee on Everglades Sugar Production" constitutional amendment. In 1994, this Court told this very same special interest group in no uncertain terms what was defective about its earlier attempt to impose a fee/tax on the sugar cane industry. See Save Our Everglades I. Far from learning from that experience, the proponents of this measure resort to the simple expedient of attempting to accomplish in three ballot initiatives what they were told they could not accomplish in a single ballot initiative in 1994. This simple expedient, however, does not resolve the fundamental problems which sank their 1994 proposal and once again fatally undercut this proposed measure.

A. The Fee on Everglades Sugar Production Violates the Single-Subject Limitation of Article XI, Section 3.

Once again, this proposed constitutional initiative engages in impermissible log rolling. As this Court said in Save Our Everglades I, 636 So. 2d at 1341:

> There is no "oneness of purpose," but rather a duality of purposes. One objective -- to restore the Everglades -- is politically fashionable, while the other -- to compel the sugar industry to fund the restoration -- is more problematic. Many voters sympathetic to restoring the Everglades might be antithetical to forcing the sugar industry to pay for the cleanup by itself, and yet these voters would be compelled to chose all or nothing. The danger is that our organic law might be amended to compel the sugar industry to pay for the cleanup singlehandedly even though a majority of voters do

not think this is wise or fair.

How the proponents of this 1996 initiative could have overlooked this passage almost defies the imagination Instead of learning from this passage, they propose yet again a virtually identical duality of purposes and would force the electorate to accept a problematic fee/tax as a *quid pro quo* for an understandably more popular and commendable to desire to clean up the Everglades. This problem, by itself, mandates that the Court strike this measure from the ballot.

But this is not the proposed amendment's only fault. It also violates the single-subject rule by impermissibly encroaching on the functions of multiple branches of government. In 1994, this Court said that a finding of liability by Florida's sugar industry and the imposition of punishment through this so-called "fee" were essential judicial functions that could not be combined with the functions of any other branch of government. That 1994 measure also intruded upon the legislative function of levying a fee and the executive function of determining what constitutes remediable pollution and the method for abating it. Save Our Everglades I, 636 So. 2d at 1340.

Once again, the proponents of this measure have failed to learn from the past. By purporting to impose this fee, which is in reality a tax,\[1] it implicitly, if not explicitly, finds Florida's sugar industry liable and in the same stroke imposes a punishment on the industry. Once again, it intrudes on the essential legislative function of levying a fee, as well as the executive function of determining what constitutes pollution and how to abate it.

Yet these are not this measure's only single-subject infirmities. It also fails to "identify the articles or sections of the Constitution substantially amended." Fine v. Firestone, 448 So. 2d at 989. In finding the sugar industry liable and imposing a penalty on it, this measure necessarily

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[1] See discussion infra at pp. 14.

affects the sugar industry's rights to open access to the courts and to trial by jury, as guaranteed by Article I, sections 21 and 22 of the Florida Constitution. By merely proposing a tax it implicates Article VII, section 1, which prohibits taxes from being levied "except in pursuance to law." It almost self-evidently implicates Article VII, section 9, which authorizes special districts (such as the South Florida Water Management District ("District") which is to administer this so-called fee) to levy taxes.

Perhaps more importantly, it singles out for special treatment the sugar industry in the EAA, thereby implicating the guarantee of equal protection found in Article I, section 2. By finding the sugar industry liable of polluting the Everglades and imposing a penalty, it also implicates the sugar industry's guarantee of due process of law under Article I, section 9. It would eliminate the Governor's right to veto any appropriation as set forth in Article III, section 8. These are but a few of the constitutional provisions affected by this proposed amendment. There may well be others, but the point has been sufficiently made.

B. The Proposed Fee on Everglades Sugar Production Violates Section 101.161(1), Florida Statutes.

Even were these constitutional infirmities not enough to invalidate this proposal, its equally patent violations of applicable statutory requirements would suffice. It violates section 101.161(1), Florida Statutes, because of its misleading incorporation by reference of Article II, section 7 of the Florida Constitution. The problem with this incorporation by reference is that these very same proponents are also proposing to amend Article II, section 7 with their proposed amendment entitled: "Responsibility for Paying Costs of Water Pollution Abatement in the Everglades" (discussed in a subsequent section to this brief). One must therefore ask: Is this

proposed constitutional amendment incorporating by reference Article II, section 7 in its current form, or is it incorporating by reference an Article II, section 7 as the proponents would like it to be amended? The proposed amendment provides no answer to this conundrum for either the Court or for an intelligent voter. Accordingly, on this separate ground this measure must be stricken from the ballot because no reasonably intelligent voter can possibly ascertain just what version of Article II, section 7 he or she would be endorsing through his or her vote.

The very title of this initiative is misleading. By describing the proposal as a "fee on Everglades sugar production," it implies that sugarcane is being grown and processed in the remaining "natural" Everglades, i.e., the Everglades Protection Area ("EPA"). See § 373.4592(2)(h), Fla. Stat. (definition of EPA). This is a false assertion, evidently intended to inflame public sentiments on the issue. In reality, sugarcane is grown and processed in the EAA. See § 373.4592(15) (description of EAA). The title is therefore confusing, or at least ambiguous, as to what the measure's geographic boundaries are and thus misleading to the voting public.

It also misleads in its euphemistic use of the term "fee" to characterize its fiscal exaction on the EAA sugar industry. This is not a mere "fee," it is plainly a "tax," i.e., "a charge usu. of money imposed by authority upon persons or property for public purposes." Webster's New Collegiate Dictionary (1976) at 1194. In utilizing the more politically palatable "fee" instead of the more accurate "tax," it is impermissibly "fly[ing] under false colors." Askew v. Firestone, 421 So. 2d at 156.

ISSUE II. **THE PROPOSED "EVERGLADES TRUST FUND" AMENDMENT IS ALSO VIOLATIVE OF ARTICLE XI, SECTION 3, OF THE FLORIDA CONSTITUTION, AND SECTION 101.161(1), FLORIDA STATUTES AND SHOULD THEREFORE BE STRICKEN FROM THE BALLOT.**

As is the case with the initiative entitled "Fee on Everglades Sugar Production", the "Everglades Trust Fund" initiative not only violates the single-subject requirements of Article XI, section 3, Florida Constitution, but is also so unclear and ambiguous as to mislead the voter in violation of section 101.161, Florida Statutes.

A. Everglades Trust Fund Initiative Violates the Single-Subject Limitation of Article XI, Section 3.

As noted earlier in this brief, a proposed initiative amendment to the Constitution which "performs the functions of different branches of government" and/or "changes more than one government function" must be stricken from the ballot as a violation of the legal requirements of Article XI, section 3 of the Florida Constitution. Evans v. Firestone, 457 So. 2d at 1354. See also Advisory Opinion to the Attorney General Re Tax Limitation, 644 So. 2d 486, 490 (Fla. 1994); Fine v. Firestone, 448 So. 2d at 990 (purpose is to prohibit "log rolling" and prevent multiple precipitous changes to Constitution). The Everglades Trust Fund initiative at issue clearly does not pass these tests and blatantly violates the precedent set down by this Court in its earlier opinion on the 1994 initiative.

This Court, in Save Our Everglades I, held that the 1994 initiative performed an essentially legislative function by establishing "a trust for restoration of the Everglades" and providing "for funding and operation of the trust." Id. at 1340. This Court opined that such a provision "implements a public policy decision of statewide significance and thus performs an essentially

legislative function." Id. In the case of the proposed Everglades Trust Fund amendment at issue, the initiative performs the exact same legislative function by establishing a trust fund for restoration of the Everglades, or in this case for "conservation and protection of natural resources and abatement of water pollution in the Everglades."

Moreover, the initiative provides for the receipt of funds by the Everglades Trust Fund and grants the administrator of the fund broad autonomy with regard to expenditures from the fund. At the same time, however, the initiative excludes the use of trust funds for areas outside of the EPA and the EAA. These functions are clearly legislative in character. Additionally, the Everglades Trust Fund, if adopted, would preempt all legislative powers regarding the trust fund and would, in effect, give the fund administrator, the District, authority supreme to that of the Legislature.

The Everglades Trust Fund initiative also impacts upon executive powers by entrusting to the administrator of the fund the power to expend trust funds to conserve and protect natural resources and abate water pollution in the EPA and EAA. It gives the District new powers: those of a trustee with control supreme to that of the executive branch in terms of how the funds are spent. Moreover, the administrator of the trust, by being given extremely broad powers to expend funds on water pollution control activities in defined areas of the Everglades, infringes upon the authority of other executive agencies, including the Department of Environmental Protection, which have jurisdiction in these areas and over water pollution control. See Save Our Everglades I, at 1340 ("Because various other executive agencies have jurisdiction in this area, the constitutionally conferred powers of the trustee would impinge on the powers of existing agencies."); see generally ch. 403, Fla. Stat.; § 373.4592, Fla. Stat., otherwise known as the

"Everglades Forever Act."

This Court, in its previous opinion on the 1994 initiative, held that the trust established therein contemplated the exercise of vast executive powers by authorizing the administrator of the trust "to expend trust funds in 'pollution cleanup and control' efforts, and thus would be required to identify offending pollutants and sources of pollution and take corrective measures." Id. at 1340. In the case of the Everglades Trust Fund initiative at issue, the administrator of the trust fund is given almost identical executive authority with regard to the expenditure of funds.

As noted above, it is clear that the Everglades Trust Fund initiative performs the functions of both the legislative and executive branches of government. Moreover, the Everglades Trust Fund initiative goes even further by performing the judicial function of finding that the "Everglades" is in need of conservation and protection and suffers from water pollution. Factual findings such as these are "quintessential judicial function[s]." Id. at 1340.

Once again, as in the case of the 1994 initiative, the Everglades Trust Fund initiative impermissibly creates a "virtual fourth branch of government with authority to exercise the powers of the other three on the subject of remedying Everglades pollution." It must be stricken from the ballot for violating the single-subject requirement of Article XI, section 3 of the Florida Constitution. Id.

B. The Everglades Trust Fund Initiative's Ballot Title and Summary are Misleading in Violation of section 101.161(1), Florida Statutes.

Under section 101.161(1), Florida Statutes, this Court's "responsibility is to determine whether the language as written misleads the public." Advisory Opinion to the Attorney General re Casino Authorization, Taxation and Regulation, 656 So. 2d 466, 468 (Fla. 1995). This statute

essentially "requires that the ballot title and summary for a proposed constitutional amendment state in clear and unambiguous language the chief purpose of the measure" and "must give the voter fair notice of the decision he must make." Askew v. Firestone, 421 So. 2d at 154-155 (Fla. 1982).

The title itself, "Everglades Trust Fund," has the grave potential of misleading a voter into believing that this initiative will encompass all conservation, protection and pollution abatement in the Everglades whereas the text of the amendment affirmatively states that the purpose of the Everglades Trust Fund is to merely "assist" in such matters. Moreover, the use of the word "assist" is conspicuously absent from the summary of the initiative. A similar defect in the 1994 petition, which implied that others might "help pay" without saying who those "others" were was one of the grounds for invalidating that earlier initiative. Save Our Everglades I, at 1341.

ISSUE III. THE PROPOSED "RESPONSIBILITY FOR PAYING COSTS OF WATER POLLUTION ABATEMENT IN THE EVERGLADES" AMENDMENT IS ALSO VIOLATIVE OF ARTICLE XI, SECTION 3, OF THE FLORIDA CONSTITUTION, AND SECTION 101.161(1), FLORIDA STATUTES AND SHOULD THEREFORE BE STRICKEN FROM THE BALLOT.

The initiative entitled "Responsibility for Paying Costs of Water Pollution Abatement in the Everglades" essentially targets the sugar farmers in the EAA as polluters of the Everglades and provides that they should be primarily responsible for the costs associated with the abatement of pollution in the Everglades. This initiative is invalid because it performs functions of the legislative, executive and judicial branches of government and because its title and summary are misleading, unclear and ambiguous.

A. **"Responsibility for Paying Costs of Water Pollution Abatement in the Everglades" Initiative Violates the Single-Subject Rule.**

The "Responsibility for Paying Costs of Water Pollution Abatement in the Everglades" initiative suffers from the same defects as the other initiatives discussed in this brief in that it "performs the functions of multiple branches of government." Save Our Everglades I, 636 So. 2d at 1340. In this case, the initiative purports to implement a public policy decision that those who cause water pollution within the EPA or the EAA should be primarily responsible for the costs of paying for abatement of such pollution. In many cases, however, the Florida Legislature has decided that those who cause pollution should not be primarily or exclusively liable for the costs of abating that pollution for various public policy reasons such as possible increase in prices to consumers, necessity of services performed, and other rationale for legislative public policy decision-making.\[3] Thus, under this Court's holding in Save our Everglades I, such an infringement upon public policy decisions of this character constitutes the performance of legislative functions. 636 So. 2d at 1340.

Further, this initiative implicates and performs the function of the judicial branch of government by making factual determinations regarding the existence of a water pollution problem within the EPA and/or the EAA and a legal determination of who is responsible for such pollution and its abatement. It also implicates the executive branch of government in that it makes determinations and/or assumptions regarding what constitutes "abatement" of water pollution and where such abatement is needed. See Save Our Everglades I at 1340 (executive branch implicated

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[3] Examples are found at chapter 376, Florida Statutes (1995) wherein the Legislature has created state programs for the restoration and cleanup of underground storage tanks, dry cleaning facilities and the like.

by giving trust administrator power to "identify offending pollutants and sources of pollution and take corrective measures"). Finally, it fails, as does the sugar fee amendment, to "identify the articles or sections of the Constitution substantially amended." Fine v. Firestone, 448 So. 2d at 989 [See discussion at pp. 13-14, supra.]

B. The Title and Summary of the Initiative Entitled "Responsibility for Paying Costs of Water Pollution Abatement in the Everglades" Are Extremely Misleading.

The first area in which the summary of the responsibility initiative is misleading to the voters, and will prevent the voters from casting an intelligent and informed ballot, is that the summary narrowly interprets who is responsible for the costs of pollution abatement whereas the text of the amendment contains a much broader definition. The summary reads, in pertinent part:

> 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. [e.s.]

The full text of the proposed amendment, on the other hand, reads at subsection (a) that:

> 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. [e.s.]

This discrepancy between the summary and the text of the proposed amendment is clearly misleading to voters. A voter who reads the summary is led to believe that the proposal applies only to those in the EAA who cause water pollution in the EPA or EAA whereas the text of the amendment itself broadly refers to anyone who causes water pollution within the EPA or the EAA. This proposed amendment could be interpreted to apply to not only those within the EAA

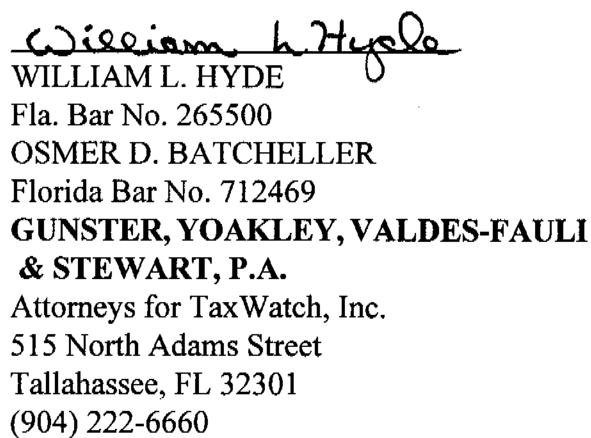
but to recreational boaters on Lake Okeechobee, recreational fishermen in the Everglades, other non-EAA lands which discharge stormwater into the EPA, and basically anyone who has any contact whatsoever with water entering or within the EAA or EPA. This ambiguity is, in and of itself, sufficient for this Court to disapprove this initiative. See Fla. Stat. § 101.161(1) (1995); Evans v. Firestone, supra; Askew v. Firestone, 421 So. 2d at 156 ("a proposed amendment cannot fly under false colors").

The title of the initiative "Responsibility for Paying Costs of Water Pollution Abatement in the Everglades" also necessarily implies that the initiative is allocating full responsibility for all costs to abate Everglades water pollution. In fact, as the summary and actual text of the proposed initiative demonstrate, the amendment only deals with allocating primary responsibility for paying the costs of pollution abatement, not the full costs. Furthermore, the title, when read in conjunction with the discrepancies in the text regarding who exactly are the targets of the initiative (*i.e.*, "those in the EAA" or "those who cause water pollution" in the EAA and EPA) makes the entire initiative, when read together, extremely unclear and ambiguous in violation of section 101.161(1) (1995).

REQUEST FOR RELIEF

It is abundantly clear that all three proposed constitutional amendments violate both the single-subject requirements of Article XI, section 3 of the Florida Constitution, and the statutory requirements of section 101.161(1), Florida Statutes. Florida TaxWatch therefore requests that the Court render an opinion striking all three measures from the ballot.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above-described document has been provided via U.S. mail this 23rd day of July, 1996 to the following counsel of record:

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