IN THE SUPREME COURT OF FLORIDA

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

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

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

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

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

# INITIAL BRIEF AND APPENDIX OF UNITED STATES SUGAR CORPORATION OPPOSING THE PROPOSED AMENDMENTS

HOLLAND & KNIGHT

Chesterfield Smith
Susan L. Turner
P.O. Drawer 810
Tallahassee, FL 32302
(904) 224-7000

Attorneys for U.S. Sugar

## TABLE OF CONTENTS


Page

TABLE OF AUTHORITIES . . . . . iii

STATEMENT OF THE CASE AND FACTS . . . . . 2

SUMMARY OF THE ARGUMENT . . . . . 3

ARGUMENT . . . . . 9

I. "EVERGLADES SUGAR TAX" . . . . . 13

A. "EVERGLADES SUGAR TAX" VIOLATES THE SINGLE-SUBJECT RULE . . . . . 14

1. The Proposal Is Guilty Of Logrolling. . . . . 14

2. The Proposal Performs Multiple Government Functions. . . . . 15

3. The Proposal Affects Many Sections Of The Florida Constitution Without Identifying Them. . . . . 18

B. "EVERGLADES SUGAR TAX" IS MISLEADING . . . . 23

II. "EVERGLADES TRUST FUND" . . . . . 29

A. "EVERGLADES TRUST FUND" VIOLATES THE SINGLE-SUBJECT RULE . . . . . 30

B. "EVERGLADES TRUST FUND" IS MISLEADING . . . 31

III. "EVERGLADES POLLUTER PAYS" . . . . . 34

A. "EVERGLADES POLLUTER PAYS" VIOLATES THE SINGLE-SUBJECT RULE . . . . . 35

B. "EVERGLADES POLLUTER PAYS" IS MISLEADING . . . . . 36

IV. THE COMBINED PACKAGE OF PROPOSED AMENDMENTS SUFFERS FROM INDEPENDENT EVILS REQUIRING THAT ALL THREE INITIATIVES BE STRICKEN FROM THE BALLOT. . . . . 39

CONCLUSION . . . . . 43

CERTIFICATE OF SERVICE . . . . . 44

INDEX TO APPENDIX . . . . . attached
APPENDIX . . . . . attached

## TABLE OF AUTHORITIES

**CASES** **Page(s)**


Advisory Opinion to the Attorney General -- Limited Marine Net Fishing, 620 So. 2d 997 (Fla. 1993) . . . . . 36

Advisory Opinion to the Attorney General -- Limited Political Terms in Certain Elective Offices, 592 So. 2d 225 (Fla. 1991) . . . . . 41

Advisory Opinion to the Attorney General Re Casino Authorization, Taxation and Regulation, 656 So. 2d 466 (Fla. 1995) . . . . . 9, 11, 25

Advisory Opinion to the Attorney General Re: Stop Early Release of Prisoners, 642 So. 2d 724 (Fla. 1994) . . . . . 23

Advisory Opinion to the Attorney General Re Stop Early Release of Prisoners, 661 So. 2d 1204 (Fla. 1995) . . . . . 12, 27

Advisory Opinion to the Attorney General Re Tax Limitation ("Tax Limitation I"), 644 So. 2d 486 (Fla. 1994) . . . . . 10, 11, 17

Advisory Opinion to the Attorney General Re Tax Limitation ("Tax Limitation II"), 673 So. 2d 864 (Fla. 1996) . . . . . 16-17

Askew v. Firestone, 421 So. 2d 151, 154-55, 156 (Fla. 1982) . . . . . 11, 12

Carroll v. Firestone, 497 So. 2d 1204, 1206 (Fla. 1986) . . . . . 12

City of Boca Raton v. State, 595 So. 2d 25 (Fla. 1992) . . . . . 24

City of DeLand v. Florida Public Service Commission, 119 Fla. 804, 813, 161 So. 735, 738 (1935) . . . . . 24

Evans v. Firestone, 457 So. 2d 1351 (Fla. 1984) . . . . . 18, 23

Fine v. Firestone, 448 So. 2d 984 (Fla. 1984) . . . . . 9, 35, 39

Florida League of Cities v. Smith,
607 So. 2d 397 (Fla. 1992) . . . . . 12

Goldner v. Adams,
167 So. 2d 575 (Fla. 1964) . . . . . 12

In Re Advisory Opinion To The Attorney General
English -- The Official Language Of Florida,
520 So. 2d 11 (Fla. 1988) . . . . . 18

In re Advisory Opinion to the Attorney General
-- Restricts Laws Related to Discrimination,
632 So. 2d 1018 (Fla. 1994) . . . . . 11

In re Advisory Opinion to the Attorney General
-- Save Our Everglades ("Save Our Everglades I"),
636 So. 2d 1336 (Fla. 1994) . . . . . passim

Jerome H. Sheip Co. v. Amos,
100 Fla. 863, 130 So. 699 (1930) . . . . . 24

Republican Party of Florida v. Smith,
638 So. 2d 26 (Fla. 1994) . . . . . 18

Rutledge v. Chandler,
445 So. 2d 1007 (Fla. 1983) . . . . . 24

Smith v. American Airlines,
606 So. 2d 618 (Fla. 1992) . . . . . 11

Smith v. City of Miami,
160 Fla. 306, 34 So. 2d 544 (1948) . . . . . 24

Weber v. Smathers,
338 So. 2d 819 (Fla. 1976) . . . . . 12

**FLORIDA CONSTITUTION**

Art. I, § 2 . . . . . 18, 36

Art. I, § 9 . . . . . 19, 36

Art. I, § 21 . . . . . 19, 36

Art. I, § 22 . . . . . 19, 36

Art. I, § 25 . . . . . 20

Art. II, § 7 . . . . . 20, 27, 28, 34, 38

Art. III, § 8 . . . . . 21

Art. III, § 19(f) . . . . . 26
Art. IV, § 10 . . . . . 2
Art. IV, § 13 . . . . . 21
Art. V, § 3(b)(10) . . . . . 2
Art. VII, § 1 . . . . . 21, 22
Art. VII, § 9 . . . . . 21, 22
Art. VII, § 14 . . . . . 34
Art. XI, § 3 . . . . . 1, 2, 9
Art. XI, §§ 2, 4 . . . . . 40
Art. XI, § 6 . . . . . 41

**FLORIDA STATUTES (1995)**

§ 16.061 . . . . . 2
§ 101.161 . . . . . 1, 2, 10
§ 373.019(2) . . . . . 13, 31
§ 373.069, .069(1)(e) . . . . . 13
§ 373.4592 . . . . . 20
§ 373.4592(2)(e), .4592(15), . . . . . 13
§ 373.4592(2)(h) . . . . . 14

**OTHER AUTHORITIES**

Webster's New Twentieth Century Dictionary
(2d Ed. 1979) . . . . . 23

## INITIAL BRIEF

> **It is as though the drafters drew up their plan to restore the Everglades, then stepped outside their role as planners, donned judicial robes, and made factual findings and determinations of liability and damages. Thus, the initiative performs functions of each branch of government. ... The initiative falls fall short of meeting the single-subject requirement of article XI, section 3 of the Florida Constitution. ... 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 wise or fair.** In re Advisory Opinion to the Attorney General -- Save Our Everglades, 636 So. 2d 1336, 1340-41 (Fla. 1994).

This is the second appearance before this Court of an attempt by Save Our Everglades, Inc., d/b/a Save Our Everglades Committee ("SOE"), to amend the Florida Constitution so as to require Florida's sugar industry to bear the financial burden of implementing SOE's choice of plans for the future of south Florida wetlands. The Court rejected SOE's first attempt because it fell "far short" of meeting the single-subject restriction of article XI, section 3, Florida Constitution; and because it violated the legal requirements for ballot titles and summaries set forth in section 101.161, Florida Statutes (1995). In re Advisory Opinion to the Attorney General -- Save Our Everglades, 636 So. 2d 1336, 1341-42 (Fla. 1994) ("Save Our Everglades I"). [A 1.] This second attempt, presented as a package of three interrelated petitions (the "SOE II petitions") [A 2], is equally invalid and even more dangerously misleading than the earlier attempt, and should be stricken from the ballot.

## STATEMENT OF THE CASE AND FACTS

In accordance with article IV, section 10, Florida Constitution and section 16.061, Florida Statutes (1995), the Florida Attorney General has petitioned this Court for an advisory opinion on the validity of three interrelated initiative petitions sponsored by SOE (the "SOE II petitions"). The Court has jurisdiction pursuant to article IV, section 10 and article V, section 3(b)(10), Florida Constitution. The sole issues before the Court are whether the SOE II petitions comply with the single-subject requirement of article XI, section 3, Florida Constitution,[1] and whether the ballot title and substance of the SOE II petitions comply with the clarity and disclosure section 101.161(1), Florida Statutes (1995).[2]

United States Sugar Corporation ("U.S. Sugar"), an employee-owned company that is a major grower and processor of sugar cane in South Florida, opposes the SOE II petitions because each suffers from clear and conclusive defects and is misleading standing alone, and because the SOE II petitions taken together -- as SOE has chosen to present them -- are even more dangerously

---

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

[2] Section 101.161(1) provides, in pertinent part:

> The substance of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.

misleading. Pursuant to this Court's Interlocutory Orders of July 3, 1996 [A 3], U.S. Sugar submits this initial brief in opposition to the three SOE II petitions. The titles, summaries, and full texts of the SOE II petitions are set forth below, with a separate section of this brief devoted to each of the three petitions. For convenience, this brief refers to the three SOE II petitions by short titles, as follows:

| | |
|---|---|
| "Everglades Sugar Tax": | Fee On Everglades Sugar Production (88,343) |
| "Everglades Trust Fund": | Everglades Trust Fund (88,344) |
| "Everglades Polluter Pays": | Responsibility For Paying Costs Of Water Pollution Abatement In The Everglades (88,345) |

## SUMMARY OF THE ARGUMENT

Some of the defects in the SOE II petitions are new. Other defects are carried over from SOE's previous unsuccessful attempt to satisfy the legal requirements for initiative petitions, and have not been corrected despite the Court's clear pronouncements in Save Our Everglades I. Each of the SOE II petitions violates the single-subject rule and is misleading. All must be stricken from the ballot.

## I. "EVERGLADES SUGAR TAX"

"Everglades Sugar Tax" is guilty of logrolling, a single-subject violation, because it combines the goal of cleaning up the

Everglades with the goal of making Florida's sugar industry pay for it. The mere moderation of the language fails to cure this implicit defect. The Court barred SOE I from the ballot in 1994 on this basis, among others, and must do so again.

The sugar tax proposal performs the functions of multiple branches of government, again violating the single-subject rule. As it did in 1994, it again performs the essential judicial functions of finding Florida's sugar industry liable for Everglades pollution, and imposing specified damages. It also performs the legislative function of levying a tax, and assumes the executive function of determining the existence of remediable levels of pollution and the method of abating it, as did the 1994 proposal. The performance of these and other government functions by a single petition is now, as it was in 1994, grounds to strike it from the ballot.

"Everglades Sugar Tax" violates the third aspect of the single-subject rule by affecting multiple sections of the Florida Constitution without identifying them. It is inconsistent with and thus modifies the various constitutional provisions guaranteeing equal protection, due process, access to courts, the right to a jury trial, and a taxpayer's Bill of Rights. It changes the constitutional provision that all forms of taxation other than ad valorem taxes are preempted to and within the exclusive power of the legislature. It also specifically but silently enacts an exemption to the constitutional limit on growth in state revenue that the people adopted in 1994. The proposal is fatally flawed

because of its failure to identify these and other constitutional provisions that are substantially affected by it.

"Everglades Sugar Tax" is also misleading to the voters by calling the tax a "fee," by using a confusing and inconsistent mixture of geographic terms, by failing to reveal in the title or summary that the text involves the Everglades Protection Area, and by using three different terms having different meanings -- grown, produced, and processed -- to describe how the sugar tax would be imposed. It refers to statutory law, implying that existing statutes will govern the tax, which is not the case. It selects an arbitrary time limit on the tax that has no real meaning; the voter cannot become educated about the amount of tax to be raised and its relationship to costs of abatement. The proposal is misleading because it incorporates by reference article II, section 7 of the Florida Constitution, a section that is proposed to be amended by the companion proposal "Everglades Polluter Pays." A voter considering "Everglades Sugar Tax" cannot possibly know whether the proposed amendment of article II, section 7, or its current version, is contemplated by the reference in "Everglades Sugar Tax." This provision thus falls far short of the clarity and disclosure requirements of Florida law.

**2. "EVERGLADES TRUST FUND"**

The "Everglades Trust Fund" petition suffers from similar, and similarly fatal, defects. Although the Court concluded in 1994 that SOE could not combine the legislative function of establishing a trust fund with the executive function

of directing the administration and expenditure of trust funds, this proposal does so again. It performs the additional legislative function of "freezing" the definitions of the geographic areas it impacts, regardless of subsequent legislative amendments to the boundaries of those areas. It makes of the South Florida Water Management District a virtual fourth branch of government, with no checks and balances or accountability. It has no place on the ballot.

"Everglades Trust Fund" is misleading to voters because its title and summary imply that all Everglades conservation and protection will operate out of the trust, whereas the text says the trust fund will merely "assist" in such efforts. The summary states that the trust "may" receive funds, but the text says the purpose of the trust is to "make funds available," implying that some funding is mandatory. Like the sugar tax proposal, this petition states that it will operate "consistent with statutory law," implying the existence of governing statutes that do not, in fact, currently exist. Finally, the proposal is misleading because the title and summary refer only to the generic term "Everglades," whereas the text uses only the narrowly defined terms "Everglades Agricultural Area" and "Everglades Protection Area."

## III. "EVERGLADES POLLUTER PAYS"

In one of the most glaring defects imaginable, "Everglades Polluter Pays" suffers from a significant substantive discrepancy both between the summary and text, and between two paragraphs of the text, rendering the petition fatally misleading.

The summary recites that the amendment would extract payment from "those in the Everglades Agricultural Area" who cause pollution within the Everglades Agricultural Area or the Everglades Protection Area. But the statement of intent is much, much broader: "It is the intent of this amendment that those who cause water pollution within the Everglades Agricultural Area or the Everglades Protection Area" shall pay. After the statement of intent, the text of the amendment once again retreats to "those in the Everglades Agricultural Area."

The proposal generates confusion by implying full responsibility for pollution in the title, falling back to undefined "primary" responsibility in the summary, then making inconsistent references in the statement of intent and the text itself. The broad cloak of liability set forth in the drafters' statement of intent will govern subsequent interpretation of the amendment, but will be hidden from the voter in the ballot box. This alone is sufficient to invalidate "Everglades Polluter Pays" as fatally misleading.

"Everglades Polluter Pays" suffers from other defects as well. As did its 1994 predecessor, it combines the judicial function of determining which parties are responsible for damages and what costs must be paid, with the executive functions of determining the existence of types or levels of pollution sufficient to trigger liability, and what constitutes abatement. It makes no substantive difference that the proposal no longer contains language expressly declaring that Florida's sugar industry

polluted the Everglades; that presumption is still an implicit and material part of the proposal and cannot be challenged. It impacts other sections of the constitution without identifying them, and in so doing violates the single-subject rule.

This proposal misleads voters by intermingling the confusing terms "Everglades," "Everglades Agricultural Area," and "Everglades Protection Area." [See map at A 5.] It is impossible for the voter to discern what universe of parties will be held responsible and in what geographic areas the proposal would apply. These are clear and conclusive defects warranting the removal of this petition from the ballot.

## IV. THE THREE ARE AS ONE.

SOE has deliberately presented these three petitions as one in an attempt to evade the single-subject rule and to mislead voters. Far from effecting a discrete change in Florida's organic law, SOE attempts to use the initiative process as the vehicle to advance its special interest against its opponent. This misuse of the initiative process is abhorrent.

The Court declared in 1994, as it always has declared when reviewing initiative proposals, that petitions cannot mislead voters or "fly under false colors." But SOE's three interrelated petitions, taken individually and together, violate these strictures in a myriad of ways. The violations combine to leave no doubt that these petitions are clearly and conclusively defective and must be stricken from the ballot.

## ARGUMENT

By now SOE ought to be quite familiar with the legal principles that govern the drafting, analysis, and interpretation of initiative petitions; although no such familiarity is reflected in the SOE II petitions. The Court repeats the same guiding **principles** in virtually every advisory opinion on the validity of initiative petitions. They are, first, that the single-subject rule of article XI, section 3, Florida Constitution, "is a rule of restraint designed to insulate Florida's organic law from precipitous and cataclysmic change." Save Our Everglades I, 636 So. 2d at 1339. The initiative petition process, properly utilized, allows the electorate to "propose and vote on singular changes in the functions of our governmental structure," and "mandates that the electorate's attention be directed to a change regarding one specific subject of government to protect against multiple precipitous changes in our state constitution." Id. (emphasis added) (quoting from Fine v. Firestone, 448 So. 2d 984, 988 (Fla. 1984)).

The single-subject restriction is particularly important in a process that lacks opportunities for public hearing, debate, and filtering in the drafting and decision-making stages, and in light of the Court's present lack of statutory authority to redraft misleading petitions or rule on their constitutionality in advance. See Save Our Everglades I, 636 So. 2d at 1339 (quoting Fine, 448 So. 2d at 988)); see also, e.g., Advisory Opinion to the Attorney General Re Casino Authorization, Taxation and Regulation, 656 So.

2d 466, 470 (Fla. 1995) (repeating the need to revise the initiative process to avoid these problems).

The second function of the single-subject rule is to prevent "logrolling," which is "a practice wherein several separate issues are rolled into a single initiative in order to aggregate votes or secure approval of an otherwise unpopular issue." Save Our Everglades I, 636 So. 2d at 1339. The people must be given an opportunity to vote on discrete changes to the state's constitution without having to accept an undesirable change in order to gain a desirable change. Id.

Third, the Court consistently has interpreted the single-subject rule of article XI, section 3 as a test of whether or not an initiative petition "substantially alters or performs" the functions of more than one branch of government. Save Our Everglades I, 636 So. 2d at 1340. The performance of multiple government functions may be revealed in a petition's impact on multiple sections of the constitution, which must in any event be revealed to the voter in order to render the proposal not misleading. Tax Limitation I, 644 So. 2d at 489-490 & n.1 ("'[H]ow an initiative proposal affects other articles or sections of the constitution is an appropriate factor to be considered in determining whether there is more than one subject included in an initiative proposal.' ... Identifying an existing section of the constitution that is affected is also important with regard to the clarity requirement of section 101.161.") (quoting first from Fine, 448 So. 2d at 990).

The Court has said repeatedly that it could better empower voters if it had the authority to take a more active role in the initiative petition process. The Court's concern with protecting the right to vote is well grounded, but the Court has always said that the right to vote is subordinate to the right to vote intelligently on a valid, not misleading proposal. See, e.g., Tax Limitation I, 644 So. 2d at 489; In re Advisory Opinion to the Attorney General -- Restricts Laws Related to Discrimination, 632 So. 2d 1018, 1020-21 (Fla. 1994) ("Although we are wary of interfering with the public's right to vote on an initiative proposal, Smith v. American Airlines, 606 So. 2d 618 (Fla. 1992), we are equally cautious of approving the validity of a ballot summary that is not clearly understandable.") (emphasis added).

The potential to mislead voters is the primary concern with the ballot title and summary requirements of section 101.161, Florida Statutes (1995). The title and summary are to be read together. Tax Limitation II, 673 So. 2d at 867. The title must be accurate. Smith v. American Airlines, 606 So. 2d 618, 621 (Fla. 1992). The title and summary must accurately track the text of a proposed amendment, and inconsistencies between the title and summary on the one hand, and the text on the other hand, will be fatal to a proposed amendment. Casino Authorization, 656 So. 2d at 468-69. The title and summary must "state in clear and unambiguous language the chief purpose of the measure." Save Our Everglades I, 636 So. 2d at 1341 (quoting Askew v. Firestone, 421 So. 2d 151, 154-55 (Fla. 1982)). A proposal need not "explain every

ramification of a proposed constitutional amendment, only the chief purpose." Save Our Everglades I, 636 So. 2d at 1341 (quoting Carroll v. Firestone, 497 So. 2d 1204, 1206 (Fla. 1986)).

This focus on the "chief purpose" of a proposed amendment by no means excuses a failure to reveal to the voter significant aspects of a proposal, and by no means permits ambiguous or confusing proposals to appear on the ballot. An initiative proposal may not "fly under false colors." Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982). The voter must be sufficiently informed to be placed on "fair notice of the content of the proposed amendment," Advisory Opinion to the Attorney General Re Stop Early Release of Prisoners, 661 So. 2d 1204, 1206 (Fla. 1995), and to "cast an intelligent and informed ballot," Save Our Everglades I, 636 So. 2d at 1341. If important aspects of the proposal cannot be discerned even by a voter determined to accomplish self-education about it, then it must fail.

Each of the SOE II petitions is "clearly and conclusively defective" when measured against these controlling legal principles, and all of them must be stricken from the ballot. Florida League of Cities v. Smith, 607 So. 2d 397, 398 (Fla. 1992); Weber v. Smathers, 338 So. 2d 819, 821 (Fla. 1976); Goldner v. Adams, 167 So. 2d 575 (Fla. 1964).

I.

**"EVERGLADES SUGAR TAX"**
**(Case No. 88,343)**

The title, summary, and text of the proposed "Everglades Sugar Tax" amendment provide as follows:

**Title:** **Fee On Everglades Sugar Production (5 words)**

**Summary:** **Provides that the South Florida Water Management District[3] shall levy an Everglades Sugar Fee of 1¢ per pound on raw sugar[4] grown in the Everglades Agricultural Area[5] to raise funds to be used, consistent with statutory law, for purposes of conservation and protection of natural resources and abatement of water pollution in the Everglades. The fee is imposed for twenty-five years. (61 words)**

**Full Text Of The Proposed Amendment:**

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

**(c) The South Florida Water Management District, or its successor agency, shall levy a fee, to be called the Everglades Sugar Fee, of one cent per pound of raw sugar, assessed against each first processor, from sugarcane grown in the Everglades Agricultural Area. The Everglades Sugar Fee is imposed to raise funds to be used, consistent with**

---

[3] Section 373.019(2), Florida Statutes (1995), defines "water management district" as "any flood control, resource, management, or water management district operating under the authority of this chapter." Each of the water management districts was created as of December 31, 1976, and the metes and bounds descriptions of the areas covered by each district are set forth in section 373.069, Florida Statutes (1995). The geographic boundaries of the South Florida Water Management District are described in section 373.069(1)(e), Florida Statutes (1995). See map at A 5.

[4] In the multi-part petition format that SOE began using in April of 1996, the word "as" is inserted here between "sugar" and "grown." [A 2.]

[5] Section 373.4592(2)(e), Florida Statutes (1995), defines the "Everglades Agricultural Area" as those lands described in section 373.4592(15), which gives a detailed metes and bounds description. See map at A 5.

**statutory law, for purposes of conservation and protection of natural resources and abatement of water pollution in the Everglades Protection Area[6] and the Everglades Agricultural Area, pursuant to the policy of the state in Article II, Section 7.**
**(2) The Everglades Sugar Fee shall expire twenty-five years from the effective date of this subsection.**

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

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

**A. "EVERGLADES SUGAR TAX" VIOLATES THE SINGLE-SUBJECT RULE.**

1. <u>The Proposal Is Guilty Of Logrolling</u>.

The Court's ruling in <u>Save Our Everglades I</u> could not have been more clear in condemning as logrolling the combination of the goal of cleaning up the Everglades with the goal of making Florida's sugar industry pay for it:

> We note that the initiative embodies precisely the sort of logrolling that the single-subject rule was designed to foreclose. 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

---

[6] Section 373.4592(2)(h), Florida Statutes (1995), defines the "Everglades Protection Area" as "Water Conservation Areas 1, 2A, 2B, 3A, and 3B, the Arthur R. Marshall Loxahatchee National Wildlife Refuge, and the Everglades National Park." <u>See</u> map at A 5.

> antithetical to forcing the sugar industry to pay for the cleanup by itself, and yet those voters would be compelled to choose 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 wise or fair.

Save Our Everglades I, 636 So. 2d at 1341. The 1996 version of the sugar tax is equally guilty of logrolling, appealing to the voters' desire to clean up the Everglades and requiring the voters to compel Florida's sugar industry to pay for it. It makes no difference that SOE has eliminated some of the explicit accusatory language that the Court condemned in 1994; the dual purposes at the heart of the proposal are the same, and are material inherent aspects of the proposal. This is a perfectly clear violation of the single-subject rule, which must preclude "Everglades Sugar Tax" from appearing on the ballot.

**2. The Proposal Performs Multiple Government Functions.**

"Everglades Sugar Tax" also violates the single-subject rule by performing the functions of multiple branches of government. The Court determined in 1994 that SOE's imposition of liability on Florida's sugar industry, and assessment of a specified penalty, were essential judicial functions that could not be combined with the functions of other branches of government, including the legislative function of levying a fee, or the executive function of determining what constitutes remediable pollution and the method of abating it. Id. at 1340. Nonetheless, the 1996 version of "Everglades Sugar Tax" suffers from the same flaws.

This proposal performs (1) the judicial functions of designating Florida's sugar industry to be specifically liable for pollution and determining the amount of damages it must pay; (2) the legislative functions of (a) imposing a tax; (b) providing for the abatement of pollution (which is presently required to be accomplished by "general law" under article II, section 7, Florida Constitution); and (c) selecting the January 1, 1996 boundaries of the various areas in which it applies as the permanent boundaries for purposes of the sugar tax with no provision for subsequent adjustments to reflect statutory changes; and (3) the executive function of determining (through unilateral assumption) the existence of remediable levels of pollution, in essence replacing state agencies that otherwise exercise those powers.

The drafters of the "Everglades Sugar Tax" petition have created another single-subject quandary for themselves by attempting to evade the reach of a pending proposed constitutional amendment, the "Tax Limitation" proposal. The "Tax Limitation" proposal will appear on the ballot this fall, and provides that new state taxes or fees imposed by amendment to the Florida Constitution on or after November 8, 1994 must be approved by at least two-thirds of the voters voting in the election. Advisory Opinion to the Attorney General Re Tax Limitation, 673 So. 2d 864, 865 (Fla. 1996) ("Tax Limitation II").[7] The "Tax Limitation"

[7] The Court has noted that the proposed Tax Limitation amendment would prohibit the exaction of precisely the type of tax proposed by SOE, without a favorable two-thirds vote:

proposal defines a "new state tax or fee" in pertinent part as "any tax or fee which would produce revenue subject to lump sum or other appropriation by the Legislature." Tax Limitation II, 673 So. 2d at 865 (emphasis added).

SOE clearly was aware of the existence and impact of the "Tax Limitation" petition, and tried to avoid its application by placing the sugar tax within the authority of the South Florida Water Management District instead of the Florida Legislature. SOE, therefore, must argue either (1) that the "Everglades Sugar Tax" is a legislative appropriation because the South Florida Water Management District can impose this tax only as a valid exercise of delegated legislative authority (and thus is subject to the supermajority requirement); or (2) that the "Everglades Sugar Tax" is not a legislative appropriation, but some substitute therefor (and not subject to the supermajority requirement). If it is not subject to appropriation by the legislature, then the sugar tax proposal performs yet another government function (appropriation)

---

> We note that this provision would not allow the exaction of a fee as proposed in the "Save-Our-Everglades" amendment without a favorable two-thirds vote of the electorate. If both this proposal and "Save-Our-Everglades" were on the ballot, and both passed, the provisions of this amendment were intended to render null and void the provisions of the "Save-Our-Everglades" amendment unless that amendment passed by a two-thirds vote.

Advisory Opinion to the Attorney General Re Tax Limitation, 644 So. 2d 486, 491 n.2 (Fla. 1994) ("Tax Limitation I"). See also Tax Limitation II, 673 So. 2d at 869 ("[T]his provision would require a two-thirds vote of the electorate to ... place a fee on the sugar industry to assist in protecting the Everglades.") (Overton, J., and Anstead, J., concurring).

in violation of the single-subject rule, and cannot appear on the ballot.

### 3. The Proposal Affects Many Sections Of The Florida Constitution Without Identifying Them.

"Everglades Sugar Tax" fails another test of whether an initiative petition violates the single-subject rule, because it affects numerous sections of the Florida Constitution without identifying them. This proposal is not a general statement of law that may or may not affect other sections of the constitution depending on how it is implemented in the future. See In Re Advisory Opinion To The Attorney General English -- The Official Language Of Florida, 520 So. 2d 11, 13 (Fla. 1988) (simple two-sentence amendment "could have broad ramifications ... [y]et on its face it deals with only one subject."). Rather, by its express terms it now demonstrably and substantially affects numerous other sections of the Florida Constitution without identifying them for the voter. The fact that it is self-contained or has an overbroad title cannot cure these defects. Evans v. Firestone, 457 So. 2d 1351, 1354 (Fla. 1984).

"Everglades Sugar Tax" modifies the promise of equal protection in article I, section 2, by selecting for liability only some of the persons and entities in Florida's sugar industry (and even distinguishing among them on the basis of location without regard to actual contribution to pollution).[8] It is inconsistent

---

[8] Note that this flaw also renders the proposal unconstitutional for several reasons, among them the disparate treatment afforded to raw sugar grown in the Everglades Agricultural Area compared to that grown outside the area, without

with, and thus necessarily modifies, the "basic right" that "[a]ll natural persons are equal before the law." It should, but does not, make this impact clear to the voter.

This proposal modifies article I, section 9, Florida Constitution, by depriving certain members of Florida's sugar industry of due process of law: "No person shall be deprived of life, liberty or property without due process of law ... ." In place of "due process," and only for the various purposes of the "Everglades Sugar Tax" amendment, it substitutes an irrebuttable presumption of liability and predetermined damages that cannot be changed or repealed by legislation as is the case with other taxation. The voter must be told, and the Court must not permit a special interest group to abuse the Florida Constitution as a vehicle for punitive taxation of that group's opponents.

"Everglades Sugar Tax" modifies article I, section 21, Florida Constitution, by depriving Florida's sugar industry of access to courts to defend against SOE's attack: "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." It likewise impacts a related provision, the right to a jury trial: "The right of trial by jury shall be secure to all and remain inviolate." Art. I, § 22, Fla. Const. This proposal is intended to circumvent or replace the entire judicial process in order to achieve its

---

regard to whether or not the fields drain into the Everglades system. [See A 5.] Unfortunately that and other constitutional issues are not presently before the Court. Independently of its unconstitutionality, however, the proposal substantially impacts these sections of the constitution without identifying them.

goals, but it fails to disclose this substantial impact on existing constitutional provisions.

"Everglades Sugar Tax" exempts some members of Florida's sugar industry from the constitutional guarantee of a Taxpayers' Bill of Rights. Art. I, § 25, Fla. Const. ("By general law the legislature shall prescribe and adopt a Taxpayers' Bill of Rights that ... sets forth taxpayers' rights and responsibilities and government's responsibilities to deal fairly with taxpayers under the laws of this state.") Whereas the constitution promises to extend the protections of this Bill of Rights to all taxpayers, the "Everglades Sugar Tax" amendment precludes some taxpayers -- selected members of Florida's sugar industry -- from receiving the Bill of Rights protections. At the very least, SOE must disclose this impact on the Florida Constitution.

Article II, section 7 of the Florida Constitution requires that "[a]dequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise." The "Everglades Sugar Tax" proposal necessarily, albeit implicitly, declares the law of Florida inadequate for this purpose, further substituting constitutional amendment rather than general law as the method for providing for abatement. See § 373.4592, Fla. Stat. (1995) (the "Everglades Forever Act"). The "Everglades Sugar Tax" proposal impacts this section of the constitution by rejecting the requirement of general law and denying the adequacy of general law, but fails to disclose this impact.

The sugar tax proposal performs the essential legislative act of imposing a tax, but fails to disclose to the voter the impact it has on executive functions that otherwise would be available in connection with the state's taxing power. Article III, section 8 of the Florida Constitution guarantees to the governor a right of veto as to any legislation, but "Everglades Sugar Tax" eliminates that right as to this exercise of the state's authority. Likewise, the "Everglades Sugar Tax" proposal is immune from the executive authority to react to revenue shortfalls as provided in article IV, section 13, Florida Constitution. These impacts should have been disclosed.

The "Everglades Sugar Tax" proposal fails to inform the voter that it has a substantial impact on the requirement of article VII, section 1, Florida Constitution, that "[a]ll other forms of taxation [other than ad valorem] shall be preempted to the state except as provided by general law." The constitution here and in article VII, section 9, provides that a legislative function -- general law -- is the exclusive method of levying a tax. Both levy and appropriation are quintessential legislative functions. See, e.g., Republican Party of Florida v. Smith, 638 So. 2d 26, 28 (Fla. 1994) ("This provision gives to the Legislature 'the exclusive power of deciding how, when, and for what purpose the public funds shall be applied in carrying on the government.'") "Everglades Sugar Tax" wrestles these rights away from the legislature for this tax, and in fact creates an entirely new type of tax (a non-ad valorem excise tax on raw sugar, imposed by a

water management district only on certain members of a certain industry), and fails to disclose this impact on the constitution. See art. VII, § 9, Fla. Const. (capping water management millage rates at 1.0 mill for ad valorem taxes).

Revenues derived from the sugar tax could exceed the constitutional limits on state revenues prescribed by article VII, section 1, Florida Constitution, but this proposal is completely silent about it. The voters in 1994 approved a constitutional limitation on the growth of the state's revenues, expressly excepting from its scope "taxes, licenses, fees, and charges for services imposed by local, regional, or school district governing bodies; or revenue from taxes, licenses, fees, and charges for services required to be imposed by any amendment or revision to this constitution after July 1, 1994." (Emphasis added.) The "Everglades Sugar Tax" proposal is a "tax .... required to be imposed by any amendment ... to [the] constitution after July 1, 1994." It thus invokes this exception to the revenue growth limit that the people just recently adopted, and it ought to so inform the voter.

"Everglades Sugar Tax," like its 1994 predecessor, falls "far short" of meeting the single-subject requirement.

### B. "EVERGLADES SUGAR TAX" IS MISLEADING.

"Everglades Sugar Tax" is also misleading to the voters in a number of material respects. The very first word of its title, "Fee," is misleading in both denotation and connotation. A "fee" is -- and is commonly understood to be -- "a payment asked or given for professional services, admissions, licenses, tuition, etc.; charge." Webster's New Twentieth Century Dictionary (2d Ed. 1979), at 671. A "fee," then, is a payment made in exchange for a benefit received, and not a penalty or imposition of damages as SOE is actually using it. A "tax," on the other hand, is a politically charged word precisely because it means "a compulsory payment ... for the support of government." Id. at 1869. Calling the sugar tax a "fee" is not only misleading (a fatal flaw in itself), but it is political rhetoric, and the Court has condemned the use of political rhetoric in initiative petitions:

> [T]he ballot summary is no place for subjective evaluation of special impact. The ballot summary should tell the voter the legal effect of the amendment and no more. The political motivation behind a given change must be propounded outside the voting booth.

Save Our Everglades I, 636 So. 2d at 1342 (quoting from Evans v. Firestone, 457 So. 2d 1351, 1355 (Fla. 1984)). SOE continues to use the more politically palatable term "fee" despite admitting to the Court in oral argument in Save Our Everglades I[9] that the sugar tax

---

[9] Audio and video tapes of the oral argument in Save Our Everglades I (Case No. 83,301, argued May 2, 1994) are available through the Florida State University Law Library in Tallahassee.

is exactly that: a tax.[10] This knowing and intentional use of an inaccurate descriptive term misleads the voter.

The title and summary of "Everglades Sugar Tax" are misleading in several other respects, including several defects related to the various geographic terms used in the proposal [see A 5], and inconsistencies between terms used in the title and summary and those used in the text. The title and summary use an undefined, broad, and ambiguous term, "Everglades." But the text applies only in the more narrowly statutorily-defined areas "Everglades Agricultural Area" and "Everglades Protection Area." The proposal as a whole is a confusing amalgam of similar but distinct terms for geographic areas affected by the proposal: "Everglades" in the title and summary but not in the text; "Everglades Agricultural Area" in the summary and text; and "Everglades Protection Area" in the text but nowhere else. The

---

[10] The "fee" is a tax no matter what SOE calls it; the law supplies the appropriate meaning to match the function of the levy. See Rutledge v. Chandler, 445 So. 2d 1007, 1008-09 (Fla. 1983) (defining "excise tax," citing City of DeLand v. Florida Public Service Commission, 119 Fla. 804, 813, 161 So. 735, 738 (1935) ("If a tax is imposed directly by the Legislature without assessment, and its sum is measured by the amount of business done, income previously received, or by the extent to which a taxable privilege may have been enjoyed or exercised by the taxpayer, irrespective of the nature or value of such taxpayer's assets or his investments in business, it is to be regarded as an excise tax."); Smith v. City of Miami, 160 Fla. 306, 34 So. 2d 544 (1948) (tax on tobacco measured by quantity handled); Jerome H. Sheip Co. v. Amos, 100 Fla. 863, 130 So. 699 (1930) (tax on privilege to store gasoline, measured by amount stored)). The sugar tax cannot be a special assessment because a special assessment must confer a special benefit on the payors and must be evenly spread among the properties receiving the benefit, neither of which occurs with the sugar tax. City of Boca Raton v. State, 595 So. 2d 25, 29 (Fla. 1992) ("a special assessment is distinguished from a tax because of its special benefit and fair apportionment").

title and summary do not accurately track the language of the proposed amendment itself because they never mention the "Everglades Protection Area," and this alone is a fatal defect. The Court has recently stricken another proposed amendment that suffered from similar flaws related to terminology, Casino Authorization, 656 So. 2d at 468-69, and must do so again here.

The title of "Everglades Sugar Tax" is misleading, and fails to accurately reflect the text of the amendment, because it refers to sugar "production" in the "Everglades." Inconsistencies and ambiguities exist with respect to both the activity being taxed and the geographic location at issue, not to mention the fact that sugarcane is not grown in the "Everglades" if "Everglades" means the Everglades National Park or the state-owned Everglades ecosystem or many other potential variations on the phrase. [See A 5.] Taken together with the summary, which says the tax will be imposed on raw sugar "grown" in the Everglades Agricultural Area, one might think that "production" means "grown," contrary to the common understanding of those terms. Thus, the ballot title and summary promise a tax on sugarcane either "produced" or "grown" either in the "Everglades" or the "Everglades Agricultural Area." But the text states that the tax will be "assessed against each first processor" of "sugarcane grown in the Everglades Agricultural Area" (emphasis added).[11] Producing, growing, and processing

[11] One could assume from the text of the amendment that sugarcane grown in the Everglades Agricultural Area but shipped elsewhere for processing would be subject to the tax -- a constitutional impossibility if, for example, it were shipped out of state to be processed.

sugarcane are not the same things; and the "Everglades" and the "Everglades Agricultural Area" are not the same things. The proposal is hopelessly confusing.

The summary of "Everglades Sugar Tax" is further misleading because it uses an ambiguous phrase, "consistent with statutory law": the fee is "to raise funds to be used, consistent with statutory law, for purposes of conservation and protection ... ." If this is a reference to currently existing statutes governing the subject of pollution in the Everglades system, then the reference is misleading by implying to the voter that the Florida Statutes already contemplate this tax, when in fact they do not; or that the Florida Statutes already contemplate the use of funds for these purposes, when in fact they do not.

SOE's choice of an arbitrary amount of tax and an arbitrary time period of twenty-five years for its collection are misleading and confusing, because they suggest to the voter that this is an appropriate amount and time period for the tax to be in place, when no basis in reality exists for this scheme. The voter cannot become educated about this problem, because no data whatsoever exists to support it. It is quite impossible to determine exactly how much money the tax will produce, how much money will be required to achieve the desired level of "abatement" (whatever that is), whether the tax will completely meet SOE's abatement goals, what is to become of extra money raised if pollution is abated before the twenty-five years expires, and what is to become of this amendment if Florida's sugar industry

disappears. Obviously, SOE selected an arbitrary number for political reasons, attempting to pass the tax off as having a definite limit. These defects are reminiscent of one of the flaws fatal to the first "Stop Early Release" petition, which purported to require prisoners to serve at least eighty-five percent of a life sentence, a calculation the Court recognized would be impossible to perform. Advisory Opinion to the Attorney General Re: Stop Early Release of Prisoners, 642 So. 2d 724, 726 (Fla. 1994). The effect of the time limit in "Everglades Sugar Tax," and the many questions it leaves unanswered, render the proposal fatally misleading in material respects as to which the voter cannot possibly become informed.

The same problem exists with regard to SOE's choice of a penny per pound, apparently selected for its alliterative value alone and having no discernible relationship to levels of pollution, cost of cleaning up pollution, or sources of pollution. The voter cannot know from the proposal itself, and cannot become educated independently, about whether this is a reasonable or adequate or excessive amount of tax. An informed decision is not possible.

"Everglades Sugar Tax" is also misleading because it incorporates by reference article II, section 7 of the Florida Constitution, a section that is proposed to be amended by "Everglades Polluter Pays." A voter considering "Everglades Sugar Tax" cannot possibly know whether the proposed amendment of article II, section 7, or its current version, is contemplated by the

reference in "Everglades Sugar Tax," and thus cannot be certain despite all efforts at self-education precisely what it is that the voter is considering. This proposed amendment also refers to an undefined "policy of the state" appearing in article II, section 7, suggesting that the constitution already contemplates a sugar tax, which of course is not the case.

A proposal so fundamentally misleading cannot appear on the ballot.

II.

"EVERGLADES TRUST FUND"
(Case No. 88,344)

The title, summary, and text of the proposed "Everglades Trust Fund" amendment provide as follows:

**Title:** **Everglades Trust Fund (3 words)**

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

**Full Text of the Proposed Amendment:**

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

**SECTION 17, Everglades Trust Fund.**

**(a) There is hereby established the Everglades Trust Fund, which shall not be subject to termination pursuant to Article III, Section 19(f). The purpose of the Everglades Trust Fund is to make funds available to assist in conservation and protection of natural resources and abatement of water pollution in the Everglades Protection Area and the Everglades Agricultural Area. The trust fund shall be administered by the South Florida Water Management District, or its successor agency, consistent with statutory law.**

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

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

**(d) For purposes of this subsection, the terms "Everglades Protection Area,"[12] "Everglades Agricultural Area,"[13] 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[14] application of this measure is held invalid for any reason, the remaining portion or application, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and effect.**

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

The Court ruled in 1994 that SOE could not combine the legislative function of establishing a trust fund with the executive function of directing the administration and expenditure of trust funds. 636 So. 2d at 1340. Despite that ruling, "Everglades Trust Fund" once again performs the legislative function of establishing a trust, and the executive function of directing how the trust will operate and how its funds will be spent. By adopting the statutory definitions of certain key phrases "as of January 1, 1996," the "Everglades Trust Fund" proposal deprives the legislature of the authority to determine the geographic boundaries within which to expend funds. If the legislature subsequently amends the statutory definitions, this provision of the constitution would be immune to the change and

---

[12] In the full-page petition format SOE initially filed with the Secretary of State, the closing quotation mark here is omitted; it is included in the multi-part format SOE began circulating in April of 1996. [A 2.]

[13] The comma here is omitted in the full-page petition format but included in the multi-part petition. [A 2.]

[14] The full-page petition format says "or," whereas the multi-part petition format says "of" here. [A 2.]

thus inconsistent, independently performing the legislative function of defining these areas. This violates the single-subject rule and requires that the proposal be stricken from the ballot.

The "Everglades Trust Fund" proposal is clearly and conclusively defective for additional reasons. It places the administration of the trust within the auspices of the South Florida Water Management District ("SFWMD"), one of several such districts the Florida Legislature created in 1976. § 373.019(2), Fla. Stat. (1995). This proposal gives SFWMD unchecked authority over an entirely new trust, independent of legislative and executive reach. It creates a "virtual fourth branch of government," a flaw that likewise infected the SOE I proposal. Save Our Everglades I, 636 So. 2d at 1340. It affects the current constitutional powers of the SFWMD set forth in article VII, section 9, without informing the voter that it does so. Its defects require that the Court strike it from the ballot.

**B. "EVERGLADES TRUST FUND" IS MISLEADING.**

"Everglades Trust Fund" is misleading to voters because its title implies that all Everglades conservation and protection will operate out of the trust, whereas the text says the trust fund will merely "assist" in such efforts. SOE's 1994 initiative was stricken on grounds (among others) that it implied others would "help pay" but those others were undefined. Save Our Everglades I, 636 So. 2d at 1341. The title and summary are misleading and fail to track the proposed amendment adequately because they refer only to the "Everglades," whereas the text does not use that term, and

to the contrary, uses the terms "Everglades Protection Area" and "Everglades Agricultural Area," neither of which appears in the title or summary.

The use of "assist" and its omission from the summary present the same problem. "Everglades Trust Fund" is also misleading because the summary states that the trust "may" receive funds, but the text says the purpose of the trust is to "make funds available," implying that some funding is mandatory. The use of the word "assist" in the text of this proposal is also misleading because it implies breadth that is not disclosed in the summary and not defined in the text. "Assisting" in the many purposes of the trust fund could mean that money from the trust fund would be expended to support certain environmental groups, or to prosecute litigation against landowners, or to purchase private property. The voter is entitled to know of these material ramifications of the proposal, but the title and summary do not disclose them.

"Everglades Trust Fund," like "Everglades Sugar Tax," uses an ambiguous phrase, saying that SFWMD shall administer the trust "consistent with statutory law." This could mean that currently existing statutes such as the Everglades Forever Act will govern the administration of the trust, but it could mean something else; the voter cannot be sure. In addition, this use of the phrase in the text is not revealed in the title or summary, and thus the proposal fails to accurately track the language of the text as to a potentially significant component of the proposal, and the voter will be unaware of the ambiguity and deprived of any

opportunity to become educated about what it means. These misleading qualities render "Everglades Trust Fund" fatally defective and unfit for submission to the electorate.

## III.

## "EVERGLADES POLLUTER PAYS"
## (Case No. 88,345)

The title, summary, and text of the proposed "Everglades Polluter Pays" amendment provide as follows:

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

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

**Full Text of the Proposed Amendment:**

**(a) The Constitution currently provides, in Article II, Section 7,[15] 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"**

---

[15] Article II, section 7, Florida Constitution, currently provides as follows:

> **Natural Resources and scenic beauty.** It shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise.

**shall have the meanings as defined in statutes in effect on January 1, 1996.**

### A. "EVERGLADES POLLUTER PAYS" VIOLATES THE SINGLE-SUBJECT RULE.

"Everglades Polluter Pays" violates the single-subject rule because it performs multiple government functions. Acting as judge and jury, it determines that pollution exists, chooses parties responsible for damages, and selects the payment of "abatement" costs as the damages to be imposed. It performs the legislative function of setting the boundaries within which it will operate, without regard to legislative amendments to the statutory definitions of these areas that might occur after January 1, 1996.

This proposal also performs the executive functions of determining that there exist types or levels of pollution sufficient to trigger liability, and that the undefined term "abatement" is the goal. SOE selected the term "abatement" rather than "reduction," or "application of best available control technology," or other standards typically applied by the executive branch in the field of environmental protection, thus altering the practice in this area. The proposal would, therefore, eliminate the executive functions of granting variances or applying alternative criteria -- relief mechanisms that are otherwise routinely available from the executive branch.

"Everglades Polluter Pays," like "Everglades Sugar Tax," affects multiple sections of the constitution without identifying them. It would replace the constitutional guarantees of due

process and equal protection with an indefensible irrebuttable presumption that imposes automatic liability. This impact on article I, sections 2, 9, 21, and 22, Florida Constitution, is not revealed to the voter.

"Everglades Polluter Pays" would have an unidentified impact on the powers of existing agencies and courts. For example, the proposal might permit the imposition of penalties against towns, tourists, airboaters, and Indians inside the Everglades Agricultural Area, without a trial. These defects violate the Court's ruling in Save Our Everglades I by performing the functions of multiple branches of government. 636 So. 2d at 1340. These violations of the single-subject rule require that the proposal be stricken from the ballot.

**B. "EVERGLADES POLLUTER PAYS" IS MISLEADING.**

"Everglades Polluter Pays" suffers from a glaring mistake -- a significant substantive discrepancy between the summary and text, and between two paragraphs of the text -- rendering the petition fatally misleading. The summary says it will extract payment from "those in the Everglades Agricultural Area" who cause pollution within the Everglades Agricultural Area or the Everglades Protection Area. But the statement of intent is much broader: "It is the intent of this amendment that those who cause water pollution within the Everglades Agricultural Area or the Everglades Protection Area" shall pay. This broad cloak of liability will be hidden from the voter in the ballot box, and alone is sufficient to invalidate "Everglades Polluter Pays" as fatally misleading.

The inconsistent references also confuse the voter about who is responsible. For example, a sugar farm that lies half inside the Everglades Agricultural Area and half outside it would be required to pay a tax on only half of the farm if the summary and text prevail, but on the whole farm if the statement of intent prevails. West Palm Beach and its residents would be "primarily" responsible for Everglades pollution if the statement of intent applies, but not under other parts of the proposal. The voter cannot make an informed decision under these circumstances.

The title of "Everglades Polluter Pays" implies that it covers full "responsibility" for paying for water pollution abatement, and even though the summary refers to "primary responsibility," the text once again includes inconsistent references to the scope of responsibility at issue, because the statement of intent contemplates a broad universe of liable parties while the text itself does not. "Primary" responsibility is a level of payment that is undefined but certainly leaves open some costs that are not to be paid as a result of the proposed amendment. This is very much like SOE's use of the phrase "help pay" in 1994, which the Court ruled gave the voter "the impression that entities other than the sugarcane industry will be sharing the expense of cleanup." Id. at 1341. And once again, as the Court found in 1994, "nothing in the text of the proposed amendment indicates that this would be the case." Id. This is a "material point" on which the voter can easily be misled.

"Everglades Polluter Pays" suffers from other defects as well. It shares with "Everglades Sugar Tax" the many defects and ambiguities related to its intermingled use of the distinct phrases "Everglades," "Everglades Agricultural Area," and "Everglades Protection Area." [See map at A 5.] The voter cannot be certain of the geographic scope of the proposal because of these inconsistencies.

The first line of the "Everglades Polluter Pays" summary states that the "Constitution currently provides the authority for the abatement of water pollution." The proposal thus appears to be self-executing, but is not. This is misleading, because the referenced provision, article II, section 7, does not itself make any provisions for abatement of pollution. Instead, it requires that general law be enacted to accomplish that goal. "Everglades Polluter Pays" thus relies upon article II, section 7, to lull the voter into a sense of security about the proposed change, while simultaneously amending it with a significant extension of the current language.

Finally, "Everglades Polluter Pays" is misleading because it fails to disclose to the voter that it may terminate current sources of funding for Everglades pollution abatement. If only polluters pay under this proposal, then the converse is that any non-polluters who otherwise contribute to Everglades abatement projects will not pay. This means, for instance, federal government funding for Everglades projects, and uniform ad valorem assessments used in part for water quality purposes, could fall by

the wayside. The voter cannot make an informed decision about this proposal without understanding this important ramification of it.

These defects are clear and conclusive, and require that the proposal be stricken from the ballot.

## IV. THE COMBINED PACKAGE OF PROPOSED AMENDMENTS SUFFERS FROM INDEPENDENT EVILS REQUIRING THAT ALL THREE INITIATIVES BE STRICKEN FROM THE BALLOT.

One of the most insidious ways in which the SOE II petitions are misleading is in their presentation and promotion as a single petition. Taken together, as they are obviously intended to be, and as they will necessarily appear on the ballot because of the consecutive serial numbers assigned to them by the Secretary of State, they effect sweeping changes in our state's organic law, rather than the narrow, specific changes that may properly be effected through the initiative petition process. The Court recognized this danger in Save Our Everglades I, quoting from Fine v. Firestone, 448 So. 2d 984, 988 (Fla. 1984):

> The single-subject requirement in the proviso language of this section is a rule of restraint. It was placed in the constitution by the people to allow citizens, by initiative petition, to propose and vote on singular changes in the functions of our governmental structure. ...
>
> It is apparent that the authors of article XI realized that the initiative method did not provide a filtering legislative process for the drafting of any specific proposed constitutional amendment or revision. ... That opportunity for input in the drafting of a proposal is not present under the initiative process and this is one of the reasons the initiative process is restricted to single-subject changes in the state constitution. The single-subject requirement in article

> XI, section 3, mandates that the electorate's attention be directed to a change regarding one specific subject of government to protect against multiple precipitous changes in our state constitution.

(Emphasis added.)

The defects arising from SOE's presentation of its three intertwined proposals go far beyond issues implicated by the use of a multi-part petition per se. The Court's dicta in Tax Limitation I that the use of a multiple-part form "raises important questions concerning the integrity of the initiative process," but that those questions are not appropriate for determination in a mandamus proceeding, does not resolve the issue. 644 So. 2d at 497. The SOE II petitions are not merely unrelated petitions joined at the top for convenience; SOE deliberately adopted this format in an effort to evade the single-subject rule and this Court's rulings in Save Our Everglades I, while promoting its package to the public as one petition. [See A 4.]

SOE clearly selected the initiative process as the vehicle for its political and pecuniary agenda because it realized that other methods at its disposal contain built-in safeguards against the misleading and unfair program SOE promotes. For instance, if SOE attempted to accomplish its goal of taxing Florida's sugar industry out of existence through legislation, as it should have, it would be stymied by the legislative filtering process that is designed to protect the state's organic law. SOE could have resorted to the revision commission process to commence less than a year hence, or circulated a petition to call a constitutional convention for this purpose. Art. XI, §§ 2, 4, Fla.

Const. This being a matter of taxation, SOE could have worked through the Taxation and Budget Reform Commission. Art. XI, § 6, Fla. Const. SOE could even have turned to bond financing to accomplish its goals. Art. VII, § 14, Fla. Const.

That SOE did none of these things is telling as to its true agenda: to effect a sweeping change to the organic law of Florida in order that a special interest group might lash out at its opponent. This the Court should not countenance. It is bad precedent and a blatant misuse of the initiative petition process. See Advisory Opinion to the Attorney General -- Limited Political Terms in Certain Elective Offices, 592 So. 2d 225, 232 (Fla. 1991) (Kogan, J., concurring in part, dissenting in part) ("No person should be required to vote for something repugnant simply because it is attached to something desirable. Nor should any interest group be given the power to 'sweeten the pot' by obscuring a divisive issue behind separate matters about which there is widespread agreement.").

Although SOE has attempted to create the impression in the voter's mind that the sole or overriding purpose of the SOE II petitions is to impose a tax on Florida's sugar industry, in reality the petitions individually and collectively attempt to effect multiple precipitous changes in Florida's constitution by imposing a tax, dictating where and for what purposes the tax revenues will be expended, and allocating financial responsibility to a specific geographic portion of a specific industry. Thus, the SOE II petitions suffer from the dual flaws of violating the very

heart of the single-subject rule, while simultaneously misleading the voter into believing a single change is at hand.

The "Everglades Sugar Tax" petition is so clearly invalid that it could have been included in the package of petitions for only one reason: to fool the voter into thinking that SOE's whole purpose is to impose a sugar tax. The intent to make these petitions appear to be a "Everglades Sugar Tax" package is misleading to the voter in several specific ways. First, the voter may think only a Everglades Sugar Tax is at stake, and thus is persuaded to vote for the entire package of three amendments in order to obtain a sugar tax. This is logrolling in its clearest form.

A voter thinking this is a sugar tax package, because of the presence and prominence of "Everglades Sugar Tax," is misled. In actuality the very broad language of "Everglades Polluter Pays" and its statement of broad intent would impose liability upon any person or entity -- perhaps the unwitting voter -- found to have caused undefined types and levels of pollution in the Everglades Agricultural Area or the Everglades Protection Area, whether that person or entity is located in the Everglades Agricultural Area or not.

The voter cannot be certain whether "Everglades Polluter Pays" and "Everglades Sugar Tax" are intended to be mutually exclusive or cumulative, nor how the two would work together if both were passed. For instance, the voter cannot know whether Florida's sugar industry would be subject to double liability if

both of these proposals passed: first through the penny per pound sugar tax, and also as a party "primarily" liable under "Everglades Polluter Pays." Voters may be unaware that double liability is a possibility.

The inclusion of "Everglades Trust Fund" in the package creates the compelling impression that funds from the sugar tax or other polluter payments will be deposited into the fund and used for its purposes. But no such requirement actually exists.

SOE's interrelated petitions violate the single-subject rule and are misleading to the voter collectively as well as individually, and should be stricken from the ballot.

## CONCLUSION

For the many reasons discussed herein, each of the three SOE II petitions individually violates the single-subject rule and is misleading to voters, and all of them should be stricken from the ballot as clearly and conclusively defective.

**HOLLAND & KNIGHT**

Susan L. Turner

Chesterfield Smith (FBN 075041)
Susan L. Turner (FBN 772097)
P.O. Drawer 810
Tallahassee, FL 32302
(904) 224-7000

**Attorneys for U.S. Sugar**

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was furnished by hand or overnight delivery to the following this 23rd day of July, 1996.

Susan L. Turner
Attorney

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

Attorneys for SOE, the sponsor:

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

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

Attorneys for Osceola Farms Co., Atlantic Sugar Association, Inc., Okeelanta Corp., and Sugarcane Growers' Cooperative of Florida, opposed to the proposed amendments:

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

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

Attorneys for Florida TaxWatch, opposed to the proposed amendments:

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

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

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

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

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

Attorneys for International Association of Machinists, opposed to the proposed amendments:

Attorney Peggy M. Fisher
Geller, Geller & Garfinkel
1815 Griffin Rd., Ste. 403
Dania, FL 33004-2252

TAL-87317