OA 8-29-96

**IN THE
SUPREME COURT
OF FLORIDA**

**CASE NOS. 88,343; 88,344; 88,345
(CONSOLIDATED FOR 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)

REPLY BRIEF OF OSCEOLA FARMS CO., ATLANTIC SUGAR ASSOCIATION, INC., OKEELANTA CORPORATION, AND SUGAR CANE GROWERS COOPERATIVE OF FLORIDA REQUESTING THAT THE PROPOSED AMENDMENTS BE STRICKEN FROM THE BALLOT

WILLIAM B. KILLIAN
Florida Bar No. 042772
JOSEPH P. KLOCK, JR.
Florida Bar No. 156678
DONALD M. MIDDLEBROOKS
Florida Bar No. 153975
VICTORIA L. WEBER
Florida Bar No. 266426
STEEL HECTOR & DAVIS, LLP
200 S. Biscayne Blvd., 41st Floor
Miami, FL 33131-2398
(305) 577-2821

BRUCE S. ROGOW
Florida Bar No. 067999
BEVERLY A. POHL
Florida Bar No. 907250
BRUCE S. ROGOW, P.A.
100 N.E. Third Avenue, Suite 900
Fort Lauderdale, Florida 33301
(954) 767-8909

Counsel for Osceola Farms Co., Atlantic Sugar Association, Inc., Okeelanta Corporation, and Sugar Cane Growers Cooperative of Florida
Opposing the Proposed Amendments

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INTRODUCTION

The Save Our Everglades Committee has filed three briefs, each of which maintains that their proposed initiatives satisfy the constitutional and statutory standards for ballot placement. The Committee's briefs also anticipated issues raised by their petition forms. We respond in this consolidated brief which addresses each of the three initiatives as well as the defects in the petition process and forms. The Court has assumed jurisdiction over the circuit court case relating to the petition approval process and format. See Order of July 18, 1996, entered in each of the initiative Advisory Opinion cases, transferring the circuit court case to this Court.

The theme of the Save Our Everglades (and their *amici's*) briefs is that their initiatives perform single functions, have no impact on other provisions of the Florida Constitution, and adequately inform the voters of the purpose and effect of the proposed amendments. The Committee writes:

> There are no substantial impacts on any level of Florida government, nor any substantial effects on any section of the Florida Constitution.

Save Our Everglades: Trust Fund Brief, No. 88,344, p. 8 (emphasis supplied).

> The proposed initiative works a single policy change, leaving all other functions of government untouched.

Save Our Everglades: Responsibility for Paying Costs of Water Pollution Abatement in the Everglades Brief, No. 88,345, p. 7 (emphasis supplied).

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

Save Our Everglades: Fee on Everglades Sugar Production Brief, No. 88,343 p. 11 (emphasis supplied). The Committee's enthusiasm hinders its ability to objectively assess the multiple functions, substantial effects, and usurpation of power inherent in its proposed initiatives.

The parties' briefs canvass the same cases. The applicable law is not in dispute. It is the application of that law which invalidates the three proposed amendments.

ARGUMENT

I.

THE FEE ON EVERGLADES SUGAR PRODUCTION AMENDMENT FAILS THE CONSTITUTIONAL AND STATUTORY TESTS

A. THE FEE AMENDMENT IS MISLEADING

The Committee concedes that the "fee" is a "tax":

> . . . the fee is analogous to excise taxes . . . . Florida also places similar excise taxes on the citrus products . . . . A further analogy to the present fee would be the severance taxes placed on . . . .
>
> The sponsors of this amendment believe that the tax is indeed fair . . . .

Fee Brief, pp. 19-20. The case law confirms that "[a] proposed amendment cannot fly under false colors . . . ." Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982). This one does, and therefore it must be stricken from the ballot. See Initial Brief of Osceola Farms Co. et al., pp. 12-15.

B. THE SUBSTANTIAL EFFECTS ON THE CONSTITUTION

The Committee contends that the "Fee" proposal's "impact on other provisions of the Constitution is nil: the District already has taxing powers, Florida Constitution Article VII, Section 9 . . . ." Fee Brief, p. 14. *Au contraire*: the District has no taxing power under the Constitution; the Constitution only permits the legislature to authorize special district taxing power:

> **Article VII, Section 9**
> . . . special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes . . . .

Thus, in the guise of a fee, the proposal portends a substantial constitutional change to governmental taxing power.

"Nil" means "nothing," i.e., no effect. Webster's New World Dictionary, Second College Edition. The amendment's usurpation of legislative powers is the antithesis of "nil." The amendment's assault on present legislative powers is the product of Save Our Everglades' frustration with representative governance:

> The people turn to the initiative process as they did with the Ethics in Government petition upheld by this Court in Weber v. Smathers, because political resistance and special interests closed off all other routes to changing policy. Cf. Weber, 338 So. 2d at 821. The Fee on Everglades Sugar Production seeks to establish equity and ethics in the environmental policy affecting Florida's Everglades.

Fee Brief, p. 8. Aside from the fact that Weber is not a comparable precedent, the Committee

selectively invokes the Everglades Forever Act, § 373.4592, Fla. Stat.[1] The Committee offers the Act to minimize the disruptive effect of constitutionally canonizing the Water Management District (Fee Brief pp. 16-17). But the Committee disregards the Fee Amendment's disruption of the delicate balancing done by the legislature to preserve the Everglades.

The Everglades Forever Act's legislative findings and intent are the product of careful, collegial analysis. See § 373.4592(1):

> (e) . . . The Legislature recognizes that the Everglades ecosystem must be restored both in terms of water quality and water quantity and must be preserved and protected in a manner that is long term and comprehensive. . . . It is the intent of the Legislature to preserve natural values in the Everglades while also maintaining the quality of life for all residents of South Florida including those in agriculture, and to minimize the impact on South Florida jobs, including agricultural, tourism, and natural resource-related jobs, all of which contribute to a robust regional economy.

The Committee's purely punitive tax assessment ("the tax is indeed fair and rightly divides the burden of Everglades restoration between the public as a whole and a single heavily subsidized industry," (Fee Brief, p. 20) reveals the Committee's distrust of the Legislature. Thus it is not surprising that the Fee amendment would dramatically change, alter and perform governance functions mandated by the Constitution. "Nil" cannot be squared with the amendment's substantial changes to:

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[1] The Committee also misstates the Act in saying, "The Everglades Forever Act. . . authorizes the District to levy and collect the Everglades Privilege Tax . . ." (Fee Brief, p. 15). The Legislature levied the privilege tax. § 373.4592(6)(a). The tax is collected by the tax collector, and the tax collector distributes the proceeds of the tax to the District. § 373.4592(6)(b).

- the legislative power to authorize local government taxing (Article VII, Section 9);
- the legislative responsibility to abate water pollution (Article II, Section 7),
- the legislative duty to appropriate funds (Article VII, Section 1(c));
- the legislative mandate to "prescribe . . . the budgetary and planning processes" (Article III, Section 19(a));
- the Governor's veto power (Article III, Section 8(a));
- the Governor's responsibility "for the planning and budgeting for the state" (Article IV, Section 1(a));
- the Article II, Section 3 mandate that "[N]o person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein."

The South Florida Water Management District is a statutory creation. Its powers are delineated by the Legislature, with executive oversight by the Governor. The proposed Amendment makes the District ("or its successor agency") a perpetual constitutional entity compelled to levy, collect, and expend taxes for 25 years.[2] The proposed grant of power to the District contradicts the authority the present Constitution gives to the Governor and the Legislature. It creates a "virtual fourth branch of government" once again. In re Advisory Opinion to the Attorney General - Save Our Everglades, 636 So. 2d 1336, 1340 (Fla. 1994).

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[2] The Fee text says: "The South Florida Water Management District, or its successor agency, shall levy a fee . . . .(2) The Everglades Sugar Fee shall expire twenty-five years from the effective date of this subsection." The Trust Fund Amendment (see *infra*) establishes a permanent trust fund "administered by the South Florida Water Management District or its successor agency . . . ."

The enormity of the change is exemplified by the District's autonomous control over the fee, and the Committee's flawed analogy to Advisory Opinion to the Attorney General, Re: Funding for Criminal Justice, 639 So. 2d 972 (Fla. 1994).

The Committee cites this Court's comment that "the amendment does not augment or detract from any of the legislative powers enumerated in the Constitution. Funding for Criminal Justice, 639 So. 2d [972] at 973-74." Fee Brief, p. 18. The Committee fails to complete the Court's discussion:

> While the initiative creates a trust fund, the funding of the trust and allocation of the monies therein remains with the legislature.

Funding for Criminal Justice, 639 So. 2d at 973. Thus, under the proposed Criminal Justice Trust Fund, the judiciary would still be required to justify its expenditures to the Legislature, as it must today; even the Chief Justice's $5,000 discretionary fund is the subject of a specific legislative appropriation. Conference Report on HB 2715, Section 7, Item 2043, Florida Legislature, 1996. In contrast, the Chairman of the South Florida Water Management District, under the proposed Fee amendment, would not be inconvenienced by the legislative appropriation process with regard to the District's expenditure of millions of dollars in sugar taxes. Indeed, those dollars -- in this "standing alone" amendment -- are not even held in trust.

Apparently recognizing the tectonic (and unspoken) change, the Committee offers the amendment's "funds to be used, consistent with statutory law" language as a palliative. The Committee suggests this "preserv[es] the Legistature's role . . . ." Fee Brief, p. 24. Actually it overrules the Legislature's role. Section 216.311, Fla. Stat., provides:

> No agency or branch of state government shall contract to spend, or enter into any agreement to spend, any monies in excess of the amount appropriated to such agency or branch unless specifically authorized by law, and any contract or agreement in violation of the chapter shall be null and void.

And it presents a host of unanswered questions, and future grounds for dispute:

- How does one divine what is "consistent with statutory law"
- Who decides whether a District expenditure is "consistent with statutory law"
- Does "consistent with statutory law" refer to statutory law in effect now, or law that is enacted in the future?
- How does "consistent with statutory law" square with "not inconsistent with general law" as used in the home rule authority provision of the Constitution, Article VIII, Section 1(g)?

The impact of the ill-defined shift of power presents "formidable difficulties to the three branches of government which have to obey it and may have to implement it." Fine v. Firestone, 448 So. 2d 984, 998 (Fla. 1984) (Shaw, J., concurring). That alone is reason to strike it from the ballot.[3]

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[3] The Game & Fresh Water Fish Commission, whose unique constitutional status (Article IV, Section 9) was the product of a studied and debated legislative joint resolution, has generated issues which provide an insight into the decisional difficulties the proposed citizen initiatives will present. See State ex rel. Griffin v. Sullivan, 30 So. 2d 919 (Fla. 1947) (Legislature may not prescribe a method of taking fish from fresh water different from that set by Commission); Florida Dept. of Natural Resources v. Florida Game & Fresh Water Fish Comm'n, 342 So. 2d 895 (Fla. 1977) (Legislature may not take final approval of Commission's budget away from Commission); Askew v. Game & Fresh Water Fish Comm'n, 336 So. 2d 556 (Fla. 1976) (construing Article IV, Section 9 and Article II, Section 7, upholding statute allowing fish to be introduced in lake to control weeds despite objection by Commission). In

C. THE FAILURE TO IDENTIFY THE SUBSTANTIALLY AFFECTED PROVISIONS OF THE CONSTITUTION

In Advisory Opinion to the Attorney General re: Tax Limitation, 644 So. 2d 486, 493 (Fla. 1994), the Court wrote: "In Fine, we expressly stated that an initiative could not substantially affect existing provisions of the constitution without identifying such provisions. 448 So. 2d at 989." Identification is important for "'the public to be able to comprehend the contemplated changes in the constitution.'" 644 So. 2d at 493, quoting Fine. Indeed, in Tax Limitation the Court found it unnecessary to decide the "debatable" single subject issues "because this initiative substantially affects specific provisions of the constitution without identifying those provisions for the voters, in violation of the principles we established in Fine." 644 So. 2d at 492.

The proposed Fee amendment should be stricken for the same reason. The summary does not mention its amendment of Article VII, Section 9.[4] The text does not disclose to the voters that the amendment substantially amends and alters Article II, Section 7; Article VII, Section 1(c); Article III, Section 19(a); Article III, Section 8(a); Article IV, Section 1(a); and Article II, Section 3. See pp. 4-5, *supra*. Fine and Tax Limitation control. See also

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Save Our Everglades, 636 So. 2d at 1341 n. 2, the Court rejected the Committee's analogy to the Game & Fresh Water Fish Commission's multiple functions. Our analogy is only to show the constitutional mischief caused by a citizen initiative freeing an agency from legislative and executive control.

[4] The summary speaks of levying the fee "on raw sugar grown in the Everglades Agricultural Areas . . . ." There is no raw sugar grown in the Everglades Agricultural Area, or anywhere else. Raw sugar is a product which results from processing sugarcane. Sugarcane is grown in the EAA. But saying "raw sugar as grown in the Everglades" is like saying "flour grown in Kansas." Whether one uses the Constitution to tax bread or sugar, amending the charter of government should require care with words.

Advisory Opinion to the Attorney General Re: Stop Early Release of Prisoners, 642 So. 2d 724, 727 (Fla. 1994) (Overton, J., concurring) ("I firmly believe that any initiative petition that substantially amends or modifies an existing provision of the constitution must mention that fact in its explanation of the proposal; otherwise it is misleading.") (emphasis in original).

D. PERFORMING MULTIPLE FUNCTIONS OF GOVERNMENT

The Committee states that "The Everglades Sugar Fee Amendment performs a single legislative function, namely the grant of fee raising authority to the water management district." Fee Brief, p. 14. The single legislative function is said to be "the limited and temporary authorization of a fee levy by an existing state agency." Fee Brief, p. 15.

Levying a fee is a legislative function. But if the "fee" is to be used, it must be collected. Collecting is an executive function. Deciding frequency of payment, penalties, confidentiality, records requirements and myriad other aspects of enforcement and collection of levies require detailed legislative enactments, or a legislative enactment delegating the rules governing collection and enforcement to the agency. See Initial Brief of Osceola Farms et al., p. 17, n. 4. Thus the amendment performs multiple legislative and executive functions, and its silence on these subjects presents the specter of serious implementation difficulties. See Fine v. Firestone, *supra* at 984 (Shaw, J., concurring).

In addition, how the "fee" is to be used implicates a different legislative function -- appropriation. The proposed amendment performs that task too. Had the amendment levied the fee and left its expenditure to the legislature it might have moved closer to the Criminal Justice Trust Fund mark. But by giving the District the distinctively legislative function of

appropriating, the amendment performs this distinct function too.

The Committee draws analogies to Carroll v. Firestone, 497 So. 2d 1204 (Fla. 1986) (the lottery amendment) and Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2d 337 (Fla. 1978) (casino amendment), claiming the "link" between sugar and the Everglades is "more logical" than that between the lottery or casino taxes and education. Fee Brief, p. 19. But linkage is not the issue, multiple legislative functions are the problem. In Carroll and Floridians, just as in Criminal Justice, the Legislature was left the duty to appropriate.

Here, by taxing, appropriating, and who knows what regarding collection and enforcement, the proposed amendment has violated the single subject rules which constrain citizen initiatives.

Finally, the Committee's attempt to avoid the ignominy of the 1994 amendment's performance of a judicial function, also fails. The Committee writes: "The language of the current initiative . . . apportions no blame for problems in the Everglades . . . ." Fee Brief, p. 4. But then the Committee asserts:

> The sponsors of this amendment believe that the tax is indeed fair and rightly divides the burden of Everglades restoration between the public as a whole and a single heavily subsidized industry . . .

Fee Brief, p. 20 (emphasis supplied). The Committee's argument is more candid than its reading of its amendment. The amendment performs a judicial function by imposing liability upon the sugar industry. See Save Our Everglades, 636 So. 2d at 1340.

The Committee's desire "to establish equity and ethics in Everglades environmental policy" *via* the fee (Fee Brief, p. 3) cannot be accomplished by an amendment

which violates constitutional and statutory strictures -- rules designed to protect voters and the Florida Constitution from precipitous and cataclysmic change, and to provide notice of what portions of the Constitution are substantially affected. Save Our Everglades, 636 So. 2d at 1339.

II.

THE EVERGLADES TRUST FUND AMENDMENT FAILS THE CONSTITUTIONAL AND STATUTORY TESTS

The Everglades Trust Fund Amendment is portrayed by the Committee as having "no substantial impacts on any level of Florida government, nor any substantial effects on any section of the Florida Constitution." Save Our Everglades' Trust Fund Brief, p. 8. The Committee offers the Trust Fund as "exercis[ing] a single function, namely the establishment of a trust fund and assures the Court that the amendment "will have no impacts on other provisions of the Florida Constitution" and that "[t]here are no hidden collateral impacts to be feared from this amendment." Id. p. 10. The Committee likens its amendment to the Criminal Justice Trust Fund, saying that like it ("to the same effect") the Everglades Trust Fund "requires only that the funds appropriated be used" for a specific purpose. Id. at 15.

What is not said by the amendment, nor the Committee Brief, is that:

- the amendment substantially affects Article III, Section 19(f)(1) which forbids trust funds unless created by "a three-fifths vote of the membership of each house of the legislature in a separate bill for that purpose only";

- the amendment usurps the Legislature's Article II, Section 7 duties to provide for abatement of water pollution;

- the amendment withdraws from the Legislature its Article VII, Section 1(c) appropriation power;

- unlike the Criminal Justice Trust Fund, the Everglades Trust fund would not be subject to appropriation by the Legislature. The legislative role was important in Criminal Justice: "While the initiative creates a trust fund, the funding of the trust and allocation of monies therein remains with the legislature." 639 So. 2d at 973.

Thus, honestly read, Criminal Justice Trust Fund is not a precedent supporting the Everglades Trust Fund; it is more supportive of the conclusion that a trust fund amendment which circumvents all legislative authority, and does not so inform voters, may not pass constitutional and statutory muster. And, fairly read, the Everglades Trust Fund amendment fails the Fine v. Firestone and multiple function tests by substantially affecting several constitutional provisions, and then not identifying them.

Finally, the Trust Fund language permits the Fund to spend as it pleases, without even paying lip service to statutory law. Unlike the Fee Amendment, the Trust's "consistent with statutory law" language only modifies the administration of the trust fund:

> The trust fund shall be administered by the South Florida Water Management District, or its successor agency, consistent with statutory law.

In its Fee amendment Brief the Committee suggests that "consistent with statutory law" would "preserve[e] the legislature's role." Fee Brief, p. 24, see discussion *supra* p. 6. The Trust Fund's different placement of the phrase and consequent evasion of legislative

spending restraints is a hidden collateral impact which adds another "formidable difficulty" to future oversight and implementation of the amendment. Fine v. Firestone, 448 So. 2d at 998 (Fla. 1984).[5] The unfettered discretion to utilize the sugar fee trust fund for conservation and water pollution abatement purposes is a far cry from the Criminal Justice Trust Fund's respect for legislative authority.

III.

THE RESPONSIBILITY FOR PAYING COSTS OF WATER POLLUTION ABATEMENT IN THE EVERGLADES AMENDMENT FAILS THE CONSTITUTIONAL AND STATUTORY TESTS

The Committee's Brief fails to address the confusion caused by the difference between its dual description of who is to be "primarily responsible" -- "those who cause water pollution within the Everglades" or "those in the Everglades . . . who cause water pollution within the Everglades . . . ." Compare "Full Text of the Proposed Amendment," sections (a) and (b).

The Briefs add to the confusion. The Committee writes:

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[5] That is, if the fund is funded. The Committee acknowledges that "each of the [three] amendments bears some relation to an overreaching [sic] theme of Everglades restoration," but pretends that each is separate and "able to be fully implemented independent of the success or failure of the other two amendments." Trust Brief, p. 11. We have argued in our Initial Brief that the three are a unified attempt to revive the 1994 proposal, and perhaps the Committee's language lapse -- "overreaching" [overarching?] -- was inadvertently revealing. But indulging the Committee's "independent" amendment view helps to demonstrate that the Trust Fund without the Fee would be like Luigi Pirandello's play -- Six Characters in Search of an Author. Neither can be fulfilled without the other.

> The initiative poses one question to voters: whether those who contribute to water pollution within the Everglades should be primarily responsible for paying the costs of their own pollution?

Save Our Everglades Responsibility for Paying Costs of Water Pollution Abatement in the Everglades Brief, p. 7 (emphasis supplied). Later it says the amendment

> will merely ensure that water polluters within the Everglades . . . are "primarily responsible" for paying cleanup and abatement costs.

Id. at 18 (emphasis supplied). Some supporters of the Committee's amendment read the amendment as applicable to all transgressors:

> Last, but no less important, fundamental fairness dictates that those who cause water pollution within the Everglades should be primarily responsible. . .

Initial Brief of Everglades Coordinating Council in Support of the Initiatives, p. 13 (emphasis supplied). The Miccosukee Tribe, whose Reservation is within the described Everglades area, agrees, placing itself within the scope of the amendment:

> First, the chief purpose of the Responsibility for Paying Costs amendment is that those who cause water pollution within the Everglades . . . are primarily responsible for payment of the costs of abating such pollution.

Initial Brief of Miccosukee Tribe of Indians of Florida p. 10. See also p. 2: "merely provides that those who cause water pollution within the Everglades shall be primarily responsible . . . ." (emphasis supplied).

The Audubon Society's confusion is apparent from its brief:

> The amendment entitled "Responsibility . . ." complies with Article XI, Section 3 because the sole subject is whether a polluter should be

> responsible for the abatement of that pollution.
>
> * * *
>
> the amendment . . . will merely ensure that water polluters within the Everglades . . . are "primarily responsible" for paying clean up and abatement costs. This amendment is not directed only at the sugar industry. It is clear that all polluters in the Everglades will pay their fair share.

Initial Brief of Nation Audubon Society, et al., pp. 4, 7 (emphasis supplied). Thus, aside from the "within/without" question confusion, the Audubon Society Brief envisions a pro-rata apportionment that is at odds with the Committee's unintelligible liability explanation:

> The term used by the proposed amendment to describe responsibility is "primarily responsible." By this is meant that those found to have polluted should be first in line in bearing financial costs associated with the pollution they have caused. Note, however, that the amendment does not attempt to limit "primarily responsible" to set a minimal percentage. . . . The clause was drafted to ensure fairness and equity.

Responsibility for Paying Costs Brief, pp. 11-12.

The amendment is silent as to who will decide what is fair and equitable. The amendment offers no guidance as to the standards to be applied by whoever is the decision-maker. "First in line" is not instructive. The amendment's conflicting descriptions of those "responsible" adds to the amendment's uncertainty. Neither "layman or judge can understand what it purports to do and perceive its limits." Fine, 448 So. 2d at 998 (Shaw, J., concurring). Indeed, the amendment's ambiguity unveils its essential flaw: standing alone it is no more than political rhetoric. Only when added to Fee and Trust does Responsibility reveal its true character as part of the trilogy designed to revive the 1994 proposal.

The Committee's analogy to Advisory Opinion to the Attorney General Re: Stop Early Release of Prisoners (Stop II), 661 So. 2d 1204 (Fla. 1995), is also flawed. Stop II was straightforward. Tried, convicted and sentenced prisoners "shall serve at least eighty-five percent of their term of imprisonment, unless granted pardon or clemency." Sentence reduction mechanisms could be "no more than fifteen percent." Life meant life. 661 So. 2d at 1205. The Responsibility Amendment is not even clear about who is to be tried. Stop II does not save this proposed amendment.

IV.

THE SINGLE FORM PETITION VIOLATES SECTION 100.371(3), FLORIDA STATUTES, AND THE RULES OF THE DIVISION OF ELECTIONS, AND CANNOT INVOKE THE POWER TO PROPOSE INITIATIVE CHANGE

The Committee argues that its single form petition format is "permissible," that its changes in wording and punctuation are not "material" and that it is therefore in "substantial compliance" with the requirements of law. Fee Brief, pp. 27-28; Trust Brief, pp. 21-22; Responsibility Brief, pp. 16-17. However, this Court has said:

> The people of the state have a right to amend their Constitution and they also have a right to require proposed amendments to be agreed to and submitted for adoption in the manner prescribed by the existing Constitution, which is the fundamental law. If essential mandatory provisions of the organic law are ignored, it violates the right of all of the people of the state to government regulated by law. It is the duty of the courts in authorized proceedings to give effect to the existing Constitution. The proposal of amendments to the Constitution is a

> highly important function of government that should be performed with the greatest certainty, efficiency, care and deliberation.

Crawford v. Gilchrist, 65 Fla. 41, 53-54, 59 So. 963, 967-968 (Fla. 1912).

The single form unified petition used by the Committee was not approved by the Secretary of State as required by § 100.371(3), Fla. Stat., and it contains changes in wording and punctuation forbidden by the rules of the Division of Elections. See attached exhibits. Moreover, combination of three ballot propositions containing multiple subjects as part of a single initiative effort through a single form petition violates the one subject requirement of Article XI, § 3, Fla. Const.

Section 100.371(3), Fla. Stat., requires the sponsor of an initiative amendment, prior to obtaining any signatures, to (1) register as a political committee pursuant to § 106.03; (2) submit the text of the proposed amendment to the Secretary of State with the form on which signatures will be affixed; and (3) obtain the approval of the Secretary of State of such form. The Committee did not obtain approval of the single form petition.

The single form petition also violates the rules of the Division of Elections which state in part:

> Any change in a previously approved petition form, or additional types of petition forms to be circulated by a previously approved circulation, shall be submitted in accordance with the provisions of this rule. A change to a petition form or an additional type of petition form means a change in the wording of the text of the proposed amendment, the ballot title or ballot summary, including changes in punctuation.

Rule 1S-2.009(10), Fla. Admin. Code. The single form petition contains changes in the wording

of the text and ballot summary, including changes in punctuation. The versions differ in meaning and, if not invalidated, raise the question of which language would appear on the ballot or in the Constitution.

These mandatory provisions of law should be enforced. They are content neutral, nondiscriminatory regulations reasonably related to the purpose of administering an honest and fair initiative procedure. Compare Taxpayers United for Assessment Cuts v. Austin, 994 F.2d 291 (6th Cir. 1993).

The Ohio Supreme Court considered variant constitutional initiative petitions in State ex rel. Carter v. Celebrezze, Jr., 63 Ohio St. 2d 326, 410 N.E. 2d 1249 (1980). The Court invalidated the petitions concluding that the initiative process was better served by a strict but easily accomplishable requirement that could be uniformly and consistently applied than by a precedent that would require the Court, in partisan circumstances without a guided standard, to determine whether a change was "significant." See State ex rel Carter v. Celebrezze, Jr., 63 Ohio St. 2d at 329-330, 410 N.E. 2d at 1251 (Brown, concurring).[6]

The single form petition, containing multiple subjects, also violates the single

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[6] The California and Oregon decisions cited by the Committee are not persuasive. California does not have a requirement that a petition form be approved prior to circulation. Moreover, the petition was a statutory initiative directed towards requiring a referendum to approve or reject a reapportionment statute which had been passed by the Legislature and the errors in the text of the petitions were limited to minor typographical errors in the listing of census tract numbers and did not result in petitions being circulated at the same time with different wording. In the Oregon case, the petition was approved by the Secretary of State and the error in the petition which did not involve the text of the amendment or the summary, was caused by the Secretary's instructions to the printer. The distinctions between the cases and the facts presented here are contained in the Memorandum responding to the Committee's Motion to Dismiss in the Williams action. See Appendix filed contemporaneously with this Answer Brief.

subject requirement of Article XI, § 3, Fla. Const. The petition is the operative document of the initiative process and the focus of the Constitution in terms of how the initiative process is invoked. It is the circulation of the petition that initially prompts a decision about the desirability of political change. In deciding whether political change is desirable, the elector examines the proposal as it is presented in the petition. If a sufficient number of electors believe a change should be considered, and the proposal passes constitutional and statutory standards, the proposal goes forward to the ballot.

The single subject requirement of the Constitution applies not only to the questions presented on the ballot but also to the petition gathering that invokes the initiative. A petition that contains multiple subjects, whether signed once, twice, three, or five times violates the one subject rule. What is important is the scope of change sought by the initiative.

This is one political committee, one plan, one petition, one initiative. The Committee's use of the single unified form petition is not permitted by the Constitution.

The infirmities of the single form petition are properly before the Court in the Williams declaratory judgment action which has been transferred here for decision.[7] Filed separately as an Appendix to this Brief are the operative pleadings which set forth these arguments in greater detail.

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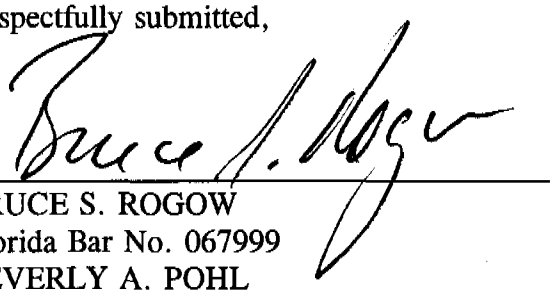
[7] As set forth in the memorandum responding to the Motion to Dismiss, the Court's Tax Cap decision does not preclude consideration of these issues. There the Court concluded mandamus was not an appropriate remedy. This case involves different issues, differing facts and claims, development of a factual record and a declaratory judgment action rather than mandamus.

CONCLUSION

For the foregoing reasons, and those advanced in the Initial Brief in Opposition to the three Save Our Everglades proposed amendments, this Court should strike the Fee on Sugar, the Trust Fund, and the Responsibility for Paying Costs of Water Pollution Abatement in the Everglades amendments from the ballot.

Respectfully submitted,



BRUCE S. ROGOW
Florida Bar No. 067999
BEVERLY A. POHL
Florida Bar No. 907250
BRUCE S. ROGOW, P.A.
100 N.E. Third Avenue, Suite 900
Ft. Lauderdale, Florida 33301
Ph: (954) 767-8909
Fax: (954) 764-1530
and
WILLIAM B. KILLIAN
Florida Bar No. 042772
JOSEPH P. KLOCK, JR.
Florida Bar No. 156678
DONALD M. MIDDLEBROOKS
Florida Bar No.153975
VICTORIA L. WEBER
Florida Bar No. 266426
STEEL HECTOR & DAVIS, LLP
200 S. Biscayne Blvd., 41st Floor
Miami, Florida 33131-2398
Ph: (305) 577-2821
Fax: (305) 577-7001

Counsel for Osceola Farms Co., Atlantic Sugar Association, Inc., Okeelanta Corporation, and Sugar Cane Growers Cooperative of Florida
Opposing the Proposed Amendments

CERTIFICATE OF SERVICE

THE UNDERSIGNED CERTIFIES that a correct copy hereof has been furnished by U.S. Mail to the following persons, this 12th day of August, 1996:

DONALD BELL
GENERAL COUNSEL
Florida Dept. of State
The Capital, PL-02
Tallahassee, FL 32399-0250

JOHN R. BERANEK
AUSLEY & McMULLEN
P.O. Box 391
Tallahassee, FL 32302

MICHAEL BLOCK
830 N.E. 18th St.
Fort Lauderdale, FL 33305

HON. ROBERT BUTTERWORTH
Attorney General
The Capitol, PL-01
Tallahassee, Florida 32399-1050

PEGGY FISHER
GELLER, GELLER & GARFINKEL
1815 Griffin Rd., Suite 403
Dania, FL 33004

CLAY HENDERSON
Florida Audubon Society
1331 Palmetto Ave., Suite 110
Winter Park, FL 32789

WADE L. HOPPING
DAVID L. POWELL
HOPPING GREEN SAMS & SMITH, P.A.
123 South Calhoun St.
P.O. Box 6526
Tallahassee, FL 32314-6526

WILLIAM L. HYDE
OSMER D. BATCHELLER
GUNSTER YOAKLEY VALDES-FAULI & STEWART, P.A.
515 North Adams St.
Tallahassee, FL 33901

RICHARD KELLER
Rumberger Kirk & Caldwell
P.O. Box 1873
Orlando, FL 32802-1873

JON MILLS and TIMOTHY McLENDON
P.O. Box 2099
Gainesville, FL 32602

HON. SANDRA B. MORTHAM
Secretary of State
The Capitol PL-02
Tallahassee, FL 32399-0250

SONIA ESCOBIO O'DONNELL
LEHTINEN, O'DONNELL, VARGAS & REINER, P.A.
7700 N. Kendall Dr. Suite 303
Miami, FL 33156

E. THOM RUMBERGER
WILLIAM L. SUNDBERG
RUMBERGER KIRK & CALDWELL, P.A.
106 E. College Avenue, Suite 700
Tallahassee, FL 32301

THE HONORABLE ION SANCHO
Leon County Supervisor of Elections
301 South Monroes Street, Suite 301
Tallahassee, FL 32302

KENNETH W. SUKHIA
FOWLER WHITE GILLEN BOGGS VILLAREAL & BANKER, P.A.
101 N. Monroe St., Suite 1090
Tallahassee, FL 32301-1547

SUSAN TURNER
CHESTERFIELD SMITH
HOLLAND & KNIGHT
P.O. Drawer 810
315 S. Calhoun St., Suite 600 (32301)
Tallahassee, FL 32302

BRUCE ROGOW

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