IN THE SUPREME COURT OF FLORIDA

Case No. 90,042

Upon Request From The Governor
For An Advisory Opinion
As To The Interpretation Of
Art. II, § 7(b), Florida Constitution

ADVISORY OPINION TO THE GOVERNOR - 1996 AMENDMENT 5 (EVERGLADES)

BRIEF AND APPENDIX OF THE FLORIDA CHAMBER OF COMMERCE, INC.

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STATEMENT OF THE CASE AND FACTS

Pursuant to article IV, section 1(c),[1] Florida Constitution, the Governor of Florida has requested this Court's opinion on the interpretation of article II, section 7(b), Florida Constitution, which was Amendment 5 on the 1996 ballot ("Amendment 5"). [A 1.] The Governor poses the following two questions:

> 1. Is the 1996 Amendment 5 to the Florida Constitution self-executing, not requiring any legislative action considering the existing Everglades Forever Act? Or is the Legislature required to enact implementing legislation in order to determine how to carry out its intended purposes and defining any rights intended to be determined, enjoyed, or protected?
>
> 2. What does the term "primarily responsible[,]" as used in 1996 Amendment 5 to the Florida Constitution, mean? Does it mean responsible for more than half of the costs of abatement, or responsible for a substantial part of the costs of abatement, or responsible for the entire costs of the abatement, or does it mean something not suggested here?

[A 1 at 3.] The Court has determined that the Governor's request is within the purview of article IV, section 1(c), and has allowed interested parties to appear.

The Florida Chamber of Commerce, Inc. (the "Chamber") files this brief as an interested party. The Chamber is a Florida corporation working with approximately 9,000 business leaders. Its membership includes numerous corporations, partnerships, and other business entities subject to state regulation and taxation. The Chamber's mission is "to be the leader in the formulation and

[1] Article IV, section 1(c), Florida Constitution, authorizes the governor to "request in writing the opinion of the justices of the supreme court as to the interpretation of any portion of this constitution upon any question affecting his executive powers and duties."

advocacy of sound public policy for Florida business." The Chamber sponsors studies on ways to make Florida government more effective and responsive, and promotes changes in statutory law to streamline regulatory programs and make them more responsive to policy makers and the public.

The Chamber acts on behalf of its members and the public at large to make government more accountable to the people. Of particular significance in this proceeding, the Chamber's Taxation Council promotes predictable, stable, equitable, and understandable taxing and spending policies. The Taxation Council studies Florida tax policy, formulates recommendations on improvements, and advocates proposed changes before the Florida Legislature, the Department of Revenue, and other decision makers. The Chamber appears as amicus curiae in selected judicial proceedings involving issues of governmental accountability, an issue the Chamber believes to be at the heart of this proceeding.

The Chamber will address only the first of the Governor's two questions, whether Amendment 5 is self-executing, and the related issue of whether Amendment 5 can be interpreted as a self-executing tax or fee without having received the favorable votes of two-thirds of all voters who voted in the November 1996 election.

In the November 1996 election, the voters of Florida considered and approved Amendments 5 and 6 relating to financial responsibility for Everglades clean up efforts. The title, summary, and text of Amendment 5 that were presented to the voters follow:

Title: Responsibility for Paying Costs of Water Pollution Abatement in the Everglades

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

Full Text of the Proposed Amendment:

> (a) The Constitution currently provides, in Article II, Section 7, the authority for the abatement of water pollution. It is the intent of this amendment that those who cause water pollution within the Everglades Agricultural Area or the Everglades Protection Area shall be primarily responsible for paying the costs of abatement of that pollution.[2]
>
> (b) Article II, Section 7 is amended by inserting (a) immediately before the current text, and adding a new subsection (b) at the end thereof, to read:
>
>> (b) Those in the Everglades Agricultural Area who cause water pollution within the Everglades Protection Area or the Everglades Agricultural Area shall be primarily responsible for paying the costs of the abatement of that pollution. For the purposes of this subsection, the terms "Everglades Protection Area" and "Everglades Agricultural Area" shall have the meanings as defined in statutes in effect on January 1, 1996.

Advisory Opinion to the Attorney General -- Fee on Everglades Sugar Production, 681 So. 2d 1124, 1130 (Fla. 1996) ("Everglades II"). This Court ruled that Amendment 5 did not perform legislative, executive, and judicial functions such as those the amendment's

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[2] Note the discrepancy between the statement of intent and the text of the amendment. The statement of intent says "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. The text of the amendment added to the Constitution, only paragraph (b), says "[t]hose in the Everglades Agricultural Area who cause water pollution" shall pay. The scope of the intent is much broader.

opponents had raised, including determining the geographic boundaries within which Amendment 5 would operate, "determining that remediable types and levels of pollution exist and will continue to exist in perpetuity, eliminating agency discretion to grant variances and other relief mechanisms, and designating abatement as the environmental goal; and ... selecting polluters as the parties liable for payment of abatement costs." Everglades II, 681 So. 2d at 1130 n.5.

Amendment 6 established a trust fund to be "administered by the South Florida Water Management District, or its successor agency, consistent with statutory law," to receive and disburse funds for conservation, protection of natural resources, and abatement of water pollution in the Everglades Protection Area and Everglades Agricultural Area. Everglades II, 681 So. 2d at 1129. The Court also ruled that Amendment 6 did not perform functions of multiple branches of state government. Id. at 1130.

Appearing on the same ballot with Amendments 5 and 6 was Amendment 1, the Tax Limitation amendment, which the voters also approved. By its express language, Amendment 1 requires at least a two-thirds favorable vote of any constitutional amendment that imposes a new State tax or fee, and applies to any amendments on the 1994 ballot or any later ballots. Art. XI, § 7, Fla. Const.; Advisory Opinion to the Attorney General re Tax Limitation, 673 So. 2d 864, 866 (Fla. 1996) ("Tax Limitation II"). Two justices of this Court noted that Amendment 1 "would require a two-thirds vote of the electorate ... to place a fee on the sugar industry to

assist in protecting the Everglades." Tax Limitation II, 673 So. 2d at 869 (Overton, J., and Anstead, J., concurring).

The number of voters voting in the November 1996 election was 5,444,245 [A 3.] Two-thirds of the voters voting in the November 1996 election is 3,629,497. Amendment 5 received 3,397,286 favorable votes, passing by a vote of 62.4% of all voters voting in the election.[3] [See A 3.] Amendment 5 did not receive a favorable vote from two-thirds of the voters voting in the election, missing that mark by 232,211 votes.

SUMMARY OF THE ARGUMENT

By the admission of its sponsor and as a matter of law under this Court's long-established test, Amendment 5 is not self-executing. Save Our Everglades argued to this Court and to the public that Amendment 5 would require implementing action by the Florida Legislature, Florida's executive agencies, and Florida's courts. Even without SOE's admission, Amendment 5 cannot be self-executing because it fails to furnish a sufficient rule for its implementation, leaving far too many questions unanswered about how to achieve its stated goals and how to protect the rights of those who would be affected by it. Amendment 5 is a statement of principles, requiring resort to legislative, regulatory, and

[3] Amendment 6 received 2,825,819 favorable votes, passing by a vote of 51.9% of those voting in the election and 57.3% of those voting on the measure. It missed the two-thirds mark by 803,678 votes. [See A 3.] The companion sugar tax of Amendment 4 failed decisively, with only 45.6% of the vote. See election results online at http://election.dos.state.fl.us.

judicial action for its implementation. The Court should answer the Governor's first question in the negative, ruling that Amendment 5 is not self-executing.

A particular danger lurks in the arguments that would interpret Amendment 5 as being self-executing and requiring the imposition of a tax or fee. The Court should reject any such interpretation, because the voters of Florida overwhelmingly approved another constitutional amendment designed to preclude new state taxes and fees without a supermajority vote, which Amendment 5 failed to achieve. Amendment 1 requires the favorable vote of two-thirds of voters voting in the election as a whole (not just on the measure at hand) before any new State tax or fee may be imposed by constitutional amendment. Despite SOE's apparent attempt to avoid application of Amendment 1 by drafting Amendment 5 with the SFWMD responsible for functional details, any tax or fee collected by that entity remains a delegated exercise of the state's exclusive power to tax, and falls within the scope of Amendment 1. The Court should not allow a single private drafter or small group of drafters of Amendment 5 to thwart the will of the people as expressed in Amendment 1. Amendment 5 cannot be interpreted as a self-executing tax or fee.

<u>ARGUMENT</u>

AMENDMENT 5 CANNOT BE A SELF-EXECUTING TAX OR FEE.

A. Amendment 5 Is Not Self-Executing Because It Does Not Provide Sufficient Rules To Govern The Conduct Of Affected Entities.

A constitutional provision is not self-executing if it fails to provide guidelines for implementation that are legally sufficient by themselves to determine how to achieve its goals and to govern the conduct of those affected. "Constitutional provisions are not self-executing if they merely indicate a line of policy or principles, without supplying the means by which such policy or principles are to be carried into effect ... ." Op. Att'y Gen. 91-8, at 2 (1991) (citing 16 C.J.S. Constitutional Law, s. 46; <u>Plante v. Smathers</u>, 372 So. 2d 933 (Fla. 1979); <u>Williams v. Smith</u>, 360 So. 2d 417 (Fla. 1978)). In order to be self-executing, Amendment 5 would have to "unambiguously provide a sufficient rule by which an individual may govern his conduct." Op. Att'y Gen. 77-136, at 3 (1977).

This Court has developed the following test for determining whether or not a constitutional provision is self-executing:

> The basic guide, or test, in determining whether a constitutional provision should be construed to be self-executing, or not self-executing, is whether or not the provision lays down a sufficient rule by means of which the right or purpose which it gives or is intended to accomplish may be determined, enjoyed, or protected without the aid of legislative enactment.

<u>Gray v. Bryant</u>, 125 So. 2d 846, 851 (Fla. 1960).

In its presentations to this Court in support of Amendment 5, the sponsor of the initiative asserted that "[t]he amendment is not self-executing." [SOE In. Br. at 14, Case No. 88,345, filed July 23, 1996.] SOE repeatedly described Amendment 5 as requiring the exercise of normal legislative, executive, and judicial procedures for its implementation. [Id. at 11-16.] SOE advised the Court and the public that instead of being self-executing, Amendment 5 merely set forth a single principle: polluters should pay. [Id.] Having successfully convinced this Court and the public that Amendment 5 was not self-executing but would leave intact the necessity for the legislature, executive agencies, and the judiciary to play their respective roles to implement the amendment, SOE should not be heard to claim otherwise. More importantly, this Court should not countenance or adopt a position contrary to that which carried Amendment 5 to success at the polls.

The Attorney General of Florida has already rendered an advisory opinion that seems to conclude that Amendment 5 may be self-executing, but the opinion is somewhat equivocal:

> [W]hile the Legislature may enact provisions implementing Amendment #5, the amendment itself establishes an obligation on polluters of the Everglades to pay the costs of abating such pollution irrespective of legislative action. ... [T]he party entitled to the benefit of the provision may resort to any common law or statutory remedy ... . [T]he Legislature has identified SFWMD as the entity authorized 'to proceed expeditiously with implementation of' the state's comprehensive program to revitalize the Everglades ... . It is the district's responsibility, therefore, to implement the constitutional mandate consonant with its statutory duties ... .

Op. Att'y Gen. Fla. 96-92, at 3-4 (1996) (emphasis added). [A 4.] The Attorney General's advisory opinion does little more than reaffirm the obvious, that "polluters pay," and that the day-to-day implementation falls to the South Florida Water Management District in accordance with statutory law. The Attorney General's opinion recognizes that the Florida Legislature may enact implementing legislation, may fashion statutory remedies, and has delegated certain implementing functions to the SFWMD.

The Attorney General's opinion predates, and does not address, the Governor's questions about whether Amendment 5 is self-executing in light of the inability of the SFWMD and the Department of Environmental Protection to implement Amendment 5 without further guidance. The Governor's request for an advisory opinion reflects the uncertainty facing lawmakers and regulators because of the many issues on which Amendment 5 is silent: "too many policy determinations remain unanswered. These entities [SFWMD and DEP] question any agencies [sic] ability to determine rights and responsibilities, the purposes intended to be accomplished, and the means by which the purposes may be accomplished." [A 1 at 2.]

If the very state agencies holding the delegated Legislative authority to implement Amendment 5 are stymied by the Amendment's failure to furnish sufficient guidelines, then Amendment 5 cannot be self-executing under the governing authorities. Amendment 5 does not lay down a sufficient rule for accomplishing its purposes. It does not lay down a sufficient rule

for determining how SFWMD, DEP, Florida's sugar industry, or other Everglades landowners must conduct themselves. It does not supply the means by which its policies are to be carried into effect. Amendment 5 is not self-executing, and the Court should answer the Governor's first question in the negative.

B. Amendment 5 Cannot Be Interpreted As Imposing Or Requiring A Tax Or Fee, Because It Failed To Garner A Two-Thirds Vote.

The attempt by SOE and others to interpret Amendment 5 as imposing or requiring a new State tax or fee is particularly troubling from a public policy standpoint. The people of Florida overwhelmingly approved Amendment 1 as a firewall against new taxes and fees,[4] and they are entitled to that protection. In order to protect taxpayers' rights and interests and give meaning to Amendment 1, the Court should zealously guard against attempts such as SOE's to circumvent the clear intent of Amendment 1.

If, as some parties have suggested, Amendment 5 is self-executing and requires or imposes taxes or fees, then it must fail because it failed to pass under the two-thirds supermajority requirement of Amendment 1. Amendment 1, now article XI, section 7, Florida Constitution, provides that constitutional amendments that seek to impose new state taxes or fees must first be approved by at least two-thirds of the voters voting in the election:

> Notwithstanding Article X, Section 12(d) of this constitution, <u>no new State tax or fee shall be imposed on</u>

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[4] Amendment 1 passed with over 69% of the vote. <u>See</u> 1996 election results at http://election.dos.state.fl.us.

> or after November 8, 1994[5] by any amendment to this constitution unless the proposed amendment is approved by not fewer than two-thirds of the voters voting in the election in which such proposed amendment is considered. For purposes of this section, the phrase "new State tax or fee" shall mean any tax or fee which would produce revenue subject to lump sum or other appropriation by the Legislature, either for the State general revenue fund or any trust fund, which tax or fee is not in effect on November 7, 1994 including without limitation such taxes and fees as are the subject of proposed constitutional amendments appearing on the ballot on November 8, 1994. This section shall apply to proposed constitutional amendments relating to State taxes or fees which appear on the November 8, 1994 ballot, or later ballots, and any such proposed amendment which fails to gain the two-thirds vote required hereby shall be null, void and without effect.

Art. XI, § 7, Fla. Const. (emphasis added).

This Court recognized in Tax Limitation I 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." Tax Limitation I, 644 So. 2d at 491 n.2. Again two years later, two Justices of the Court noted that the Tax

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[5] The Tax Limitation amendment contains 1994 dates because it was originally circulated in anticipation of making a ballot position in the November 1994 general election. This Court struck it from the ballot in 1994. Advisory Opinion to the Attorney General re: Tax Limitation, 644 So. 2d 486, 491 (Fla. 1994) ("Tax Limitation I"). Nevertheless, because initiative petition signatures are good for four years under section 100.371(2), Florida Statutes, and because of an intervening constitutional amendment, the Tax Limitation amendment remained viable and the Court approved it in 1996, finding 1994 to be a valid effective date. Tax Limitation II, 673 So. 2d at 865-66.

Limitation amendment would require a two-thirds vote to tax Florida's sugar industry for Everglades purposes: "this provision would require a two-thirds vote of the electorate to ... place a fee on the sugar industry to assist in protecting the Everglades." Tax Limitation II, 673 So. 2d at 869 (Overton, J., and Anstead, J., concurring).

Save Our Everglades, the sponsor of Amendments 5 and 6, and other parties, have argued that Amendment 5 imposes a direct tax or fee on Florida's sugar industry and others (presumably only after affording due process and extending equal protection in the determination of the targets' status as "polluters").[6] Under such an interpretation, Amendment 5 is subject to Amendment 1, and must be declared unconstitutional because it failed to receive a two-thirds vote of the voters voting in the election.

Amendment 5 received 3,397,286 votes, passing by a margin of 68.1% of voters who voted on Amendment 5, but only 62.4% of the voters voting in the election. In order to satisfy the supermajority requirement of Amendment 1, Amendment 5 needed the votes of two-thirds of the 5,444,245 voters who voted in the election.[7] Two-thirds of the number of voters voting in the

[6] In effect, SOE now attempts to make Amendment 5 do the work intended for Amendment 4, the failed Sugar Tax amendment. Faced with a choice between the Sugar Tax and what they perceived to be a more broad-based and generalized statement of principle, the people clearly rejected the former, and in accordance with the voters' clear voice, the latter should not be interpreted as the functional equivalent of the former.

[7] Parties aligned with Save Our Everglades appeared in opposition to Amendment 1, arguing among other things that Amendment 1 was misleading because voters might not grasp the

election is 3,629,497, and so Amendment 5 fell short of the Amendment 1 requirement by 232,211 votes. Therefore, Amendment 5 cannot be interpreted as a self-executing measure that requires or imposes a tax or fee.

SOE may have attempted to circumvent Amendment 1's definition of a "new State tax or fee" by making the SFWMD responsible for implementing Amendment 5, but the attempt failed for two reasons. First, any taxing authority that the SFWMD has is necessarily by virtue of delegated Legislative authority, and still falls within the Amendment 1 definition of a "new State tax or fee." Second, SOE crafted and promoted, and the voters approved, the Everglades Trust Fund (Amendment 6) as the vehicle for receiving and disbursing funds for Everglades clean-up subject to statutory law, including any funds generated under Amendment 5. Such trust funds are specifically included within the scope of Amendment 1.

Amendment 1 defines a "new State tax or fee" as "any tax or fee which would produce revenue subject to lump sum or other appropriation by the Legislature, either for the State general revenue fund or any trust fund ... ." Art. XI, § 7, Fla. Const. (emphasis added). Under article VII, section 1, Florida Constitution, the state has the exclusive power of taxation unless

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significant distinction between requiring a two-thirds vote of voters voting on the measure and requiring a two-thirds vote of voters voting in the election. Both the ballot summary and the text of the amendment expressly require that the supermajority be measured against the number of voters voting in the election as a whole, however, and this Court approved the language as clear and not misleading. Tax Limitation II, 673 So. 2d at 866, 868.

the Legislature provides otherwise, and Amendment 5 did not amend or substantially affect article VII, section 1. See Save Our Everglades II, 681 So. 2d at 1130 (approving Amendment 5 despite opponents' arguments that it substantially affected many unidentified sections of the Florida Constitution, including article VII, section 1). The Attorney General in his advisory opinion to SFWMD recognized that any implementing authority SFWMD has originated with the Legislature. Op. Att'y Gen. Fla. 96-92, at 3-4 (1996). The Legislature may delegate its taxing power to be implemented by a state agency such as SFWMD, but the power is the state's nonetheless. To claim that revenues generated by taxes or fees imposed by Amendment 5 are not "new State taxes or fees" simply because they are routed through the SFWMD is to fly in the face of the state's exclusive taxing power, and the Court must reject any such interpretation.

Reading Amendment 5 in para materia with its companion, the Amendment 6 Everglades Trust Fund, further buttresses the conclusion that Amendment 1 applies. Amendment 6 requires that the Everglades Trust Fund be "administered by the [SFWMD], or its successor agency, consistent with statutory law." Art. X, § 17(a), Fla. Const. (emphasis added); see Save Our Everglades II, 681 So. 2d at 1129 (same). This Court ruled in Save Our Everglades II that Amendment 6 did not perform other governmental functions, and therefore Amendment 6, like Amendment 5, leaves intact the appropriation power belonging exclusively to the state. Amendment 6 is replete with language of subordination to the state's revenue-

raising authority, as it must be. Trust fund revenues are expressly included in Amendment 1's definition of new state taxes or fees.

The Court should not thwart the will of the people, as expressed in their overwhelming approval of Amendment 1, by adopting a narrow interpretation of "new State tax or fee" that would allow special interest groups to hide a new tax behind a constitutional amendment that does not clearly and expressly impose one. Any subterfuge the drafter of Amendment 5 attempted to accomplish, by refusing to acknowledge the revenue-raising role of the Legislature and mentioning only that SFWMD would carry out the logistics of Amendment 5, is entitled to very little significance:

> In analyzing a constitutional amendment adopted by initiative rather than by legislative or constitution revision commission vote, the intent of the framers should be accorded less significance than the intent of the voters as evidenced by materials they had available as a predicate for their collective decision. An absence of debate and recorded discussion marks the development of an initiative proposal. To accord the same weight to evidences of the intent of an amendment's framer as is given to debates and dialogue leading a proposal adopted from diverse sources would allow one person's private documents to shape constitutional policy as persuasively as the public's perception of the proposal. This we cannot permit.

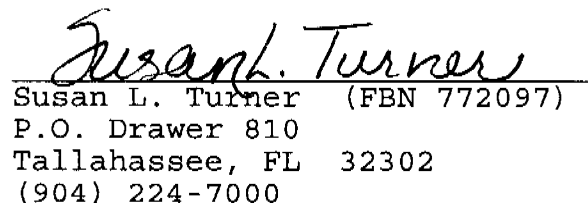
Williams v. Smith, 360 So. 2d 417 n.5 (Fla. 1978). In the November 1996 election, the people of Florida overwhelmingly adopted a constitutional provision to require a supermajority vote in order to impose any new State taxes or fees. The people simultaneously rejected a highly-publicized attempt to impose a tax or fee on Florida's sugar industry to pay for pollution abatement in the

Everglades.[8] Any interpretation of Amendment 5 that allows it to impose a new tax or fee is fundamentally at odds with the crystal clear intent of the voters expressed in their rejecting the tax and erecting a super-barrier against all new state taxes and fees. The Court must not interpret Amendment 5 as imposing any new tax or fee.

CONCLUSION

Amendment 5 leaves far too many questions unanswered to be considered self-executing. It is, instead, a statement of policy and principles, and requires implementing legislation. It cannot validly be interpreted as imposing or requiring new State taxes or fees, because it failed to achieve a supermajority vote as required by Amendment 1. Accordingly, the Court should advise the Governor that Amendment 5 is not self-executing, and should reject any interpretation that would make Amendment 5 impose or require new State taxes or fees.

HOLLAND & KNIGHT



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[8] Amendment 1 passed by over 69% of the vote, and Amendment 4 received only 45.6% of the votes. See election results online at http://election.dos.state.fl.us.

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 7th day of April, 1997.

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Appendix Part 1

STATE OF FLORIDA

Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

LAWTON CHILES
GOVERNOR

90 042

FILED
SID J. WHITE
MAR 6 1997
CLERK, SUPREME COURT
By ______
Chief Deputy Clerk

March 6, 1997

Honorable Gerald Kogan
Chief Justice, and the Justices
of the Supreme Court of Florida
Supreme Court Building
500 South Duval Street
Tallahassee, FL 32399-1925

Dear Chief Justice Kogan and Justices:

Pursuant to Article IV, Section 1(c) of the Constitution of the State of Florida, your opinion is requested as to the interpretation of my executive duties and responsibilities as chief executive under Article IV, Section 1(a), Article III, s. 19(h), and Article II, Section 7(b), of the Constitution of the State of Florida.

Article IV, Section 1(a) relates to my general obligations as chief executive, in particular, my duty to ensure "that the laws be faithfully executed" and as "chief administrative officer of the state responsible for the planning and budgeting for the state." Article III, Section 19(h) requires that I recommend revisions to the state planning document, and that I "report to the legislature on the progress in achieving the state planning document's goals." [Section 187.201(10) of the Florida Statutes, establishes a State Comprehensive Plan goal to "[p]romote restoration of the Everglades system and of the hydrological and ecological functions of degraded or substantially disrupted surface waters."] Article II, Section 7(b) requires that "[t]hose in the Everglades Agricultural Area who cause water pollution within the Everglades Protection Area shall be primarily responsible for paying the costs of the abatement of that pollution," (hereinafter "Amendment 5").

As background, it should be noted that the "Everglades Forever Act" was enacted after many years of litigation involving the United States of America, the State of Florida, the South Florida Water Management District, the Department of Environmental Protection, and certain large agricultural interests to determine how and at whose expense pollution of the Everglades should be abated. s. 373.4592, Fla. Stat.

The Everglades Forever Act established two funding sources for pollution abatement in the Everglades Agricultural Area (EAA); that is, the Everglades agricultural privilege tax, and the levy of a 0.1 mill ad valorem tax on property within the Okeechobee Basin. ss. 373.4592(6) and (4)(a). Therefore, the law in effect at the time of the adoption of Amendment 5 was designed to divide the burden of the costs of pollution abatement on the public by the 0.1 mill tax and the agricultural users by the privilege tax of $24.89 per acre.

I

Prior to the time that the debate on these issues rose to the current pitch, the Attorney General opined that Amendment 5 was self-executing. Op. Att'y Gen. Fla. 96-92 (1996). Other government entities have suggested an opinion that the amendment is not self-executing; that too many policy determinations remain unanswered. These entities question any agencies ability to determine rights and responsibilities, the purposes intended to be accomplished, and the means by which the purposes may be accomplished.

Due to the uncertainty created by the unclear language of Amendment 5, the South Florida Water Management District and the Department of Environmental Protection, the governmental entities charged with enforcing the Everglades pollution abatement initiatives, are unable to move forward to enforce this amendment without a clear interpretation as to its meaning and effect. As Governor, I am responsible for providing these executive agencies with direction as to their enforcement responsibilities, to see that the law is faithfully executed, and to report on the state's progress in restoring the Everglades System.

II

Several divergent interpretations have been suggested by interested parties as to the meaning of "primarily responsible." Some government agencies believe that "primarily responsible" could mean something in excess of fifty percent. Therefore, polluters within the EAA are chiefly, but not totally, responsible for the costs of abatement. They also believe that whether these costs are to be apportioned according to the amount of pollution contributed, and whether and to what extent other entities not described in Amendment 5 are responsible for pollution abatement costs, is not clear from the text of Amendment 5 and is subject to clarification.

Proponents of Amendment 5 have opined that the amendment imposes the entire cost of abatement on polluters within the EAA. Only upon failure of the primarily responsible parties to satisfy the

costs of abatement would a secondarily responsible party (the public) be called upon to satisfy the obligation.

As the state's chief administrative officer responsible for planning and budgeting, I am in doubt as to my duties in seeing that Amendment 5 is being faithfully executed.

CONCLUSION

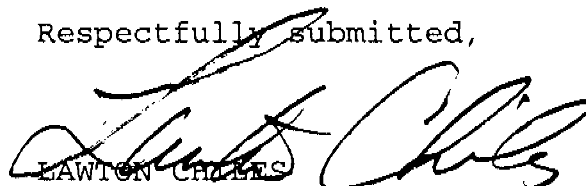
The consequences of these determinations are substantial and of immense importance to the well-being of the state and of the future of the Florida Everglades. Years of litigation have transpired, which has delayed implementation of the necessary steps to clean up this international treasure. The lack of clarity in Amendment 5 promises to engender further litigation absent an expeditious resolution of the questions I am posing.

For the foregoing reasons, I respectfully request the opinion of the Justices of the Supreme Court on the following questions affecting my executive duties and responsibilities:

1. Is the 1996 Amendment 5 to the Florida Constitution self-executing, not requiring any legislative action considering the existing Everglades Forever Act? Or is the Legislature required to enact implementing legislation in order to determine how to carry out its intended purposes and defining any rights intended to be determined, enjoyed, or protected?

2. What does the term "primarily responsible" as used in 1996 Amendment 5 to the Florida Constitution, mean? Does it mean responsible for more than half of the costs of abatement, or responsible for a substantial part of the costs of abatement, or responsible for the entire costs of the abatement, or does it mean something different not suggested here?

Respectfully submitted,



LAWTON CHILES

LC/gdk

APPENDIX PART 2

ADVISORY OPINION TO the ATTORNEY GENERAL--FEE ON the EVERGLADES SUGAR PRODUCTION.
ADVISORY OPINION TO the ATTORNEY GENERAL--EVERGLADES TRUST FUND.
ADVISORY OPINION TO the ATTORNEY GENERAL--RESPONSIBILITY FOR PAYING COSTS OF WATER POLLUTION ABATEMENT IN the EVERGLADES.

Nos. 88343 to 88345.

Supreme Court of Florida.

Sept. 24, 1996.

Attorney General petitioned for advisory opinions on validity of initiative petitions circulated by environmental group. Subsequently, declaratory judgment action was filed against group, challenging validity of signatures obtained on petitions, and that action was ordered transferred to Supreme Court, following which group moved to dismiss and plaintiffs moved for summary judgment. The Supreme Court, Shaw, J., held that: (1) proposals, which sought to amend Constitution by imposing levy of one penny per pound on raw sugar to be used for Everglades restoration, creating trust fund to be used for Everglades restoration, and requiring polluters to pay for abatement of their pollution in Everglades, did not violate single-subject requirement; (2) ballot title and summary of proposals were not misleading; (3) unified petition did not violate single-subject rule; and (4) de minimis wording changes when petitions were consolidated into single unified petition did not significantly alter meaning of affected provisions, and signatures were therefore not invalid.

Ordered accordingly.

[1] CONSTITUTIONAL LAW ⚩ 9(1)
92k9(1)
To comply with single-subject requirement, proposed constitutional amendment of initiative petition must manifest logical and natural oneness of purpose. West's F.S.A. Const. Art. 11, § 3.

[2] CONSTITUTIONAL LAW ⚩ 9(1)
92k9(1)
Proposal of initiative petition which sought to amend State Constitution by imposing levy of one penny per pound on raw sugar, to be used for Everglades restoration, did not violate single-subject rule; imposition of fee and designation of revenue for Everglades restoration were two components directly connected to fundamental policy of requiring first processors to contribute toward ongoing restoration efforts, fee amendment did not substantially affect or alter any government function, but was levy by existing agency, and there was no substantial impact on other sections of Constitution. West's F.S.A. Const. Art. 7, § 9; Art. 11, § 3.

[3] CONSTITUTIONAL LAW ⚩ 9(1)
92k9(1)
Proposal of initiative petition may affect multiple branches of government without violating single subject rule, so long as it does not substantially alter or perform functions of those branches. West's F.S.A. Const. Art. 11, § 3.

[4] CONSTITUTIONAL LAW ⚩ 9(1)
92k9(1)
Ballot title and summary of initiative petition's proposal to impose levy of one penny per pound on raw sugar to be used for Everglades restoration was not misleading on ground that proposed "fee" was really tax; initiative proposed levy, whether characterized as fee or tax, and there was no confusion as to who paid, how much they paid, how long they paid, to whom they paid, or general purpose of payment. West's F.S.A. § 101.161(1).

[5] CONSTITUTIONAL LAW ⚩ 9(1)
92k9(1)
Initiative proposing to amend Constitution by creating trust fund to be used for Everglades restoration did not violate single-subject rule

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by performing multiple government functions, i.e., legislative functions of establishing trust fund and selecting for perpetuity borders of Everglades Agricultural Area and Everglades Protection Area, and executive function of directing purposes for which trust fund had to be expended; amendment substantially altered only one section of Constitution, accomplishing single, limited purpose of creating trust to receive and disburse funds for Everglades conservation. West's F.S.A. Const. Art. 10, § 1 et seq.; Art. 11, § 3.

[6] CONSTITUTIONAL LAW ⚷ 9(1)
92k9(1)
Ballot title and summary of initiative petition proposing to amend Constitution by creating trust fund to be used for Everglades restoration were not misleading, despite claim that voters would necessarily assume that proceeds resulting from other initiatives proposing to impose levy of one penny per pound on raw sugar, and requiring polluters to pay for abatement of their pollution, would have to be deposited into fund; neither title nor summary specified that monies from fee amendments had to fund trust, but rather, they promised only establishment of trust to receive and disburse monies, and voters reading title and summary would learn chief purpose of initiative and be able to make informed decision about whether to approve or reject amendment. West's F.S.A. Const. Art. 10, § 1 et seq.; West's F.S.A. § 101.161(1).

[7] CONSTITUTIONAL LAW ⚷ 9(1)
92k9(1)
Proposal of initiative petition seeking to amend Constitution so as to require polluters to pay for abatement of their pollution in Everglades did not violate single-subject rule by performing legislative, executive, and judicial functions; initiative had limited and focused objective of making those who caused water pollution within Everglades Protection Area or Everglades Agricultural Area primarily responsible for paying costs of abatement of that pollution. West's F.S.A. Const. Art. 2, § 7; Art. 11, § 3.

[8] CONSTITUTIONAL LAW ⚷ 9(1)
92k9(1)
Ballot title and summary of initiative petition proposing to amend Constitution by requiring polluters to pay for abatement of their pollution in Everglades were not misleading. West's F.S.A. Const. Art. 2, § 7; West's F.S.A. § 101.161(1).

[9] CONSTITUTIONAL LAW ⚷ 9(.5)
92k9(.5)
Unified initiative petition, which consolidated three petitions, did not violate single-subject rule; as presented to signers, each proposal addressed single subject, each was clearly free standing, and signers could support or reject one or more of them. West's F.S.A. Const. Art. 11, § 3.

[10] CONSTITUTIONAL LAW ⚷ 9(.5)
92k9(.5)
De minimis wording changes in approved initiative petitions when they were consolidated into single unified petition did not significantly alter meaning of affected provisions, and signatures were therefore not invalid, particularly as substantial compliance with rule requiring submission of any changes was sufficient, given that underlying purpose of rule was to have approved petition presented to signers substantially unchanged; errors were without substance, there was no attempt to mislead, and voters expressed their support for petitions. Fla.Admin. Code Ann. r. 1S-2.009(10).

***1126** Robert A. Butterworth, Attorney General and Louis F. Hubener, III, Assistant Attorney General, Tallahassee, for Presentor.

E. Thom Rumberger, George N. Meros, Jr. and William L. Sundberg, of Rumberger, Kirk & Caldwell, P.A., Tallahassee, and Jon Mills and Timothy McLendon, Gainesville, on behalf of Save Our Everglades; Richard A. Keller of Rumberger, Kirk & Caldwell, Orlando, on behalf of Everglades Coordinating Council; Sonia Escobio O'Donnell of Lehtinen, O'Donnell, Vargas & Reiner, P.A., Miami, on behalf of Miccosukee Tribe of Indians of Florida; Clay Henderson, Winter Park, on behalf of National Audubon Society, Florida Audubon Society, National Parks and Conservation Association, World Wildlife

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Fund, and Clean Water Action; Michael Block, Ft. Lauderdale, Interested Parties, Proponents.

Chesterfield Smith and Susan L. Turner of Holland and Knight, Tallahassee, on behalf of United States Sugar Corporation; Bruce S. Rogow and Beverly A. Pohl of Bruce S. Rogow, P.A., Ft. Lauderdale, and William B. Killian, Joseph P. Klock, Jr., Donald M. Middlebrooks, Victoria L. Weber and Jonathan Sjostrom of Steel Hector & Davis, LLP, Miami, on behalf of Osceola Farms Company, Atlantic Sugar Association, Incorporated, Okeelanta Corporation and Sugarcane Growers Cooperative of Florida; Kenneth W. Sukhia of Fowler, White, Gillen, Boggs, Villareal & Banker, P.A., Tallahassee, on behalf of Associated Industries of Florida; Peggy Fisher of Geller, Geller & Garfinkel, Dania, on behalf of International Association of Machinists; John Beranek and James Harold Thompson of Ausley & McMullen, Tallahassee, and Scottie J. Butler, General Counsel, Gainesville, on behalf of Florida Farm Bureau Federation; Wade L. Hopping and David L. Powell of Hopping, Green, Sams & Smith, P.A., Tallahassee, on behalf of Florida Chamber of Commerce, Inc.; William L. Hyde and Osmer D. Batcheller of Gunster, Yoakley, Valdes-Fauli & Stewart, P.A., Tallahassee, on behalf of Florida TaxWatch, Inc., Interested Parties, Opponents.

CORRECTED OPINION

SHAW, Justice.

The Attorney General petitioned this Court for advisory opinions on the validity of three initiative petitions circulated by a group known as Save Our Everglades Committee (SOE). In response to the Attorney General's request, we issued orders permitting interested parties to file briefs and heard oral argument on the validity of the proposed amendments. We have consolidated the three petitions for review in this opinion but will address the three proposals separately. We have jurisdiction. Art. IV, § 10; art. V, § 3(b)(10), Fla. Const.

Subsequent to the Attorney General's petitions, Steve Williams, Okeelanta Corporation, Atlantic Sugar Association, Inc., and Osceola ***1127** Farms Company filed a declaratory judgment action against SOE, which we ordered transferred to this Court. SOE filed a motion to dismiss and Williams et al. filed a motion for summary judgment. Both parties filed responsive motions. We grant SOE's motion to dismiss, deny plaintiffs' motion for summary judgment and hold that the signatures obtained on the unified single form petition are valid.

We also find that the three initiative petitions entitled "Fee on Everglades Sugar Production" (Fee), "Everglades Trust Fund" (Trust Fund), and "Responsibility for Paying Costs of Water Pollution Abatement in the Everglades" (Responsibility) comply with the single-subject requirement in article XI, section 3, of the Florida Constitution and that the ballot titles and summaries comply with section 101.161, Florida Statutes (1995). Consequently, we approve the proposed amendments for placement on the ballot.

Our analysis of each proposed amendment is limited to determining two issues: (1) whether the proposed amendment violates the single-subject requirement in article XI, section 3, of the Florida Constitution, which states that an amendment proposed by initiative "shall embrace but one subject and matter directly connected therewith;" and (2) whether the ballot title and summary are misleading and thus violate section 101.161(1), Florida Statutes (1995). [FN1]

FN1. In Advisory Opinion to the Attorney General--Save Our Everglades, 636 So.2d 1336 (Fla.1994), we reviewed the current proposed amendments' predecessor and struck it from the ballot concluding that the title, summary, and text violated the single-subject rule and the ballot title and summary requirements. Id. at 1342. We note that the proponents of the initiatives have addressed each of the concerns we raised in reviewing the prior proposed amendment.

[1] The single-subject limitation is a rule of restraint designed to guard against unbridled

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cataclysmic changes in Florida's organic law, and " 'logrolling,' 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." In re Advisory Opinion to the Attorney General--Save Our Everglades, 636 So.2d 1336, 1339 (Fla.1994). To comply with the single-subject requirement, the proposed amendment must manifest a "logical and natural oneness of purpose." Fine v. Firestone, 448 So.2d 984, 990 (Fla.1984).

The proposed amendment must also comply with the requirements of section 101.161. "[S]ection 101.161 requires that the ballot title and summary for a proposed constitutional amendment state in clear and unambiguous language the chief purpose of the measure." Askew v. Firestone, 421 So.2d 151, 154-55 (Fla.1982). This is to provide fair notice of the content of the proposed amendment so that the voter will not be misled as to its purpose, and can cast an intelligent and informed ballot. Advisory Opinion to the Attorney General re Stop Early Release of Prisoners, 661 So.2d 1204, 1206 (Fla.1995). We now turn to each of the subject initiatives.

I. PROPOSED FEE AMENDMENT

[2] The Fee proposal seeks to amend article VII, section 9 of the Florida Constitution by imposing a levy of one penny per pound on raw sugar. The full text of the petition reads as follows:

TITLE: FEE ON EVERGLADES SUGAR PRODUCTION

SUMMARY: Provides that the South Florida Water Management District shall levy an Everglades Sugar Fee of 1 cents per pound on raw sugar grown in the Everglades Agricultural Area to raise funds to be used, consistent with statutory law, for purposes of conservation and protection of natural resources and abatement of water pollution in the Everglades. The fee is imposed for twenty-five years.

FULL TEXT OF THE PROPOSED AMENDMENT:

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

(c) The South Florida Water Management District, or its successor agency, shall levy a fee, to be called the Everglades Sugar Fee, of one cent per pound of raw sugar, assessed against each first processor, from sugarcane grown in the Everglades Agricultural Area. The Everglades *1128 Sugar Fee is imposed to raise funds to be used, consistent with statutory law, for purposes of conservation and protection of natural resources and abatement of water pollution in the Everglades Protection Area and Everglades Agricultural Area, pursuant to the policy of the state in Article II, Section 7.

(2) The Everglades Sugar Fee shall expire twenty-five years from the effective date of this subsection.

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

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

The opponents of the proposal assert that the Fee initiative violates the single-subject rule by logrolling the goal of cleaning up the Everglades with the goal of making Florida's sugar industry pay for it; by performing multiple functions of multiple branches of government; [FN2] and by affecting many sections of the Florida Constitution without identifying them. [FN3] We disagree and conclude that the Fee amendment complies with the single-subject rule. First, it proposes a clear, single question to the voters: Should the sugar industry pay a penny a pound towards Everglades restoration? The imposition of the fee and the designation of the revenue for Everglades restoration are two components directly connected to the fundamental policy of requiring first processors to contribute towards ongoing

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Everglades restoration efforts.

FN2. Opponents contend that the Fee initiative performs the following functions of government: the judicial function of designating Florida's sugar industry to be liable for pollution and determining the amount of damages it must pay; the legislative functions of imposing a tax, providing for the abatement of pollution, selecting the January 1, 1996, boundaries as the permanent boundaries without providing for subsequent statutory changes; and the executive function of determining the existence of remediable levels of pollution, thus replacing state agencies that otherwise exercise those powers.

FN3. Opponents contend that the initiative fails to mention its amendment of article VII, section 9; 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.

[3] Second, the Fee amendment does not substantially affect or alter any government function, but is a levy by an existing agency. As this Court noted in Advisory Opinion to the Attorney General re Limited Casinos, 644 So.2d 71 (Fla.1994), it is "difficult to conceive of a constitutional amendment which would not affect other aspects of government to some extent." Id. at 74. A proposal may affect multiple branches of government, as does the instant proposal, so long as it does not substantially alter or perform the functions of these branches. Save Our Everglades, 636 So.2d at 1340.

Third, the opponents misapply the single-subject test by characterizing the amendment as affecting multiple sections of the constitution. We have stated in previous opinions that "the possibility that an amendment might interact with other parts of the Florida Constitution is not sufficient reason to invalidate the proposed amendment." Limited Casinos, 644 So.2d at 74. In the instant case, there is no substantial impact on other sections of the Florida Constitution.

[4] With regard to the ballot title and summary, the opponents assert that each is misleading because the "fee" is really a tax, and this Court has distinguished between fees and taxes on the grounds that taxes are used for "governmental operations," whereas fees are used "to fund services received by the paying customers." Advisory Opinion to the Attorney General re Tax Limitation, 644 So.2d 486, 491 (Fla.1994). Opponents argue that a fee involves a quid pro quo that is lacking in the proposed Fee amendment. We reject the opponents' argument and reiterate our statement from Save Our Everglades, to wit, the initiative "imposes a levy--whether characterized as a fee or a tax--on ***1129** raw sugar." 636 So.2d at 1340. There is no confusion relative to who pays, how much they pay, how long they pay, to whom they pay, and the general purpose of the payment. We find that the ballot title and summary comply with section 101.161 by clearly and unambiguously informing the voter relative to the purpose and substance of the amendment. Accordingly, we conclude that the initiative entitled, "Fee on Everglades Sugar Production" complies with the single-subject and ballot title and summary requirements and should retain its place on the ballot.

II. PROPOSED TRUST FUND AMENDMENT

Next, the Trust Fund proposal seeks to amend article X by adding section 17, thereby creating a trust fund to be used for Everglades restoration. The full text of the petition reads as follows:

TITLE: EVERGLADES TRUST FUND

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

FULL TEXT OF 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

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Everglades Trust Fund, which shall not be subject to termination pursuant to Article II, 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", [sic] "Everglades Agricultural Area" and "South Florida Water Management District" shall have the meanings as defined in statutes in effect on January 1, 1996.

(b) If any portion or application of this measure is held invalid for any reason, the remaining portion or application, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and effect.

[5][6] Opponents of the Trust Fund argue that the initiative violates the single-subject rule by performing multiple government functions: the legislative functions of establishing a trust fund and selecting for perpetuity the January 1, 1996, borders of the Everglades Agricultural Area and Everglades Protection Area and the executive function of directing the purposes for which the trust funds must be expended. The opponents further claim that the Trust Fund proposal substantially affects other sections of the Florida Constitution without identifying them. [FN4] The opponents also contend that the ballot title and summary are misleading because voters necessarily would assume that ***1130** proceeds resulting from the Fee and Responsibility initiatives must be deposited into the Trust Fund, yet neither the ballot title or summary specifies that monies from the Fee amendment must fund the Trust Fund.

FN4. Opponents contend that the Trust Fund proposal 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;" article VII, section 1(c) by withdrawing its appropriation power; and article II, section 7 by usurping the legislature's duties to provide for the abatement of water pollution.

We reject the opponents' contentions that the Trust Fund initiative violates the single-subject requirement and conclude that it substantially alters only one section of the constitution. The amendment accomplishes a single, limited purpose: the creation of a trust to receive and disperse funds for Everglades conservation. It performs no other functions and has no substantial impact on other branches of state government or upon the Florida Constitution.

The title and summary promise only the establishment of a trust to receive and disperse monies. The voters reading the title and summary will learn the chief purpose of the initiative and be able to make an informed decision about whether to approve or reject the amendment. Accordingly, we find that the initiative entitled "Everglades Trust Fund" complies with the single-subject and ballot title and summary requirements and should retain its place on the ballot.

III. PROPOSED RESPONSIBILITY AMENDMENT

Finally, the Responsibility proposal seeks to amend article II, section 7 by requiring polluters to pay for the abatement of their pollution. The full text of the petition reads as follows:

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TITLE: RESPONSIBILITY FOR PAYING COSTS OF WATER POLLUTION ABATEMENT IN THE EVERGLADES
SUMMARY: The Constitution currently provides the authority for the abatement of water pollution. This proposal adds a provision to provide that those in the Everglades Agricultural Area who cause water pollution within the Everglades Protection Area or the Everglades Agricultural Area shall be primarily responsible for paying the costs of the abatement of that pollution.
FULL TEXT OF THE PROPOSED AMENDMENT
(a) The Constitution currently provides, in Article II, Section 7, the authority for the abatement of water pollution. It is the intent of this amendment that those who cause water pollution within the Everglades Agricultural Area or the Everglades Protection Area shall be primarily responsible for paying the costs of abatement of that pollution.
(b) Article II, Section 7 is amended by inserting (a) immediately before the current text, and adding a new subsection (b) at the end thereof, to read:
(b) Those in the Everglades Agricultural Area who cause water pollution within the Everglades Protection Area or the Everglades Agricultural Area shall be primarily responsible for paying the costs of the abatement of that pollution. For the purposes of this subsection, the terms "Everglades Protection Area" and "Everglades Agricultural Area" shall have the meanings as defined in statutes in effect on January 1, 1996.

[7][8] Opponents argue that the Responsibility initiative violates the single-subject rule by performing legislative, executive, and judicial functions, [FN5] and that the ballot title and summary are misleading. We disagree and find that the Responsibility initiative manifests "a logical and natural oneness of purpose" thereby complying with the single-subject requirement. Fine v. Firestone, 448 So.2d at 990. The initiative has a limited and focused objective: Those 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. We also conclude that the ballot title and summary are not misleading. The Responsibility initiative makes clear that those in the Everglades *1131 Protection Area or the Everglades Agricultural Area who cause water pollution will pay for their pollution. Accordingly, we find that the initiative entitled "Responsibility for Paying Costs of Water Pollution Abatement in the Everglades" complies with the single-subject and ballot title and summary requirements and should retain its place on the ballot.

FN5. Opponents claim the Responsibility proposal performs the legislative function of "freezing" the boundaries within which the amendment would operate as of January 1, 1996; the executive functions of determining that remediable types and levels of pollution exist and will continue to exist in perpetuity, eliminating agency discretion to grant variances and other relief mechanisms, and designating abatement as the environmental goal; and the judicial function of selecting polluters as the parties liable for payment of abatement costs.

IV. COMPLAINT FOR DECLARATORY JUDGMENT

The plaintiffs argue that the signatures obtained on SOE's single unified petition are invalid because the petition contains changes in wording and punctuation forbidden by the rules of the Division of Elections. [FN6] Although each of the separate petitions was approved, SOE consolidated the three petitions into a single form and circulated it without obtaining subsequent approval. The consolidated petition contained separate signature lines, ballot titles, summaries, and texts of the three initiatives. In bold type at the top of the form, the petition read: "THREE PETITIONS . READ EACH CAREFULLY . SIGN AND DATE ANY OR ALL". The plaintiffs further assert that consolidating the three petitions violates the single-subject rule.

FN6. The rules of the Division of Elections state in

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pertinent 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.

[9][10] We first reject plaintiffs' argument that the unified petition violates the single-subject rule and find that, as presented to signers of the unified petition, each proposal addresses a single subject, each is clearly freestanding, and signers could support or reject one or more of them. Second, we address the plaintiffs' argument that the changed language is more than a technical defect, that it substantially alters the petitions. The following wording changes occur in the ballot summary of the Fee proposal and text of the Trust Fund proposal as printed on the single unified petition form:

Approved Summary of Fee Petition (emphasis added)

Summary: Provides that the South Florida Water Management District shall levy an Everglades Sugar Fee of 1 cents per pound on raw sugar grown in the Everglades Agricultural Area ...

Unified Petition (emphasis added)

Summary: Provides that the South Florida Water Management District shall levy an Everglades Sugar Fee of 1 cents per pound on raw sugar as grown in the Everglades Agricultural Area ...

Approved Text of Trust Fund Petition (emphasis added)

(b) If any portion or application of this measure is held invalid for any reason, the remaining portion or application, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and effect.

Unified Petition (emphasis added)

(b) If any portion of 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.

We reject plaintiffs' argument and conclude that the de minimis wording changes in these petitions do not significantly alter the meaning of the affected provisions. We hold that substantial compliance with Rule 1S-2.009(10) is sufficient, given that the underlying purpose of the rule is to have an approved petition presented to signers substantially unchanged.

By way of analogy, we agree with the logic of the Court of Appeals of Oregon in Barnes v. Paulus, 36 Or.App. 327, 588 P.2d 1120 (1978). In that case, the court upheld the validity of an initiative petition even though opponents contended that it did not comply with rules mandating that the text of a circulating initiative petition be printed exactly as it was submitted when the preliminary petition ***1132** was filed. The Paulus court explained that "[t]he important thing is the extent to which the defect might influence the voters' consideration of the merits" and that

> [i]t is a matter of balancing the seriousness of the defect against the consequences of invalidation. Before the electorate will be disfranchised by anyone's failure to comply with the statute, the failure must be one of considerable magnitude.... In determining the magnitude of the failure, we must consider the likelihood that the error misled the signers of the petition.

Id. 588 P.2d at 1124. In applying the analysis of Paulus to the instant case, we conclude it is unlikely that the noted wording changes in the instant petitions misled, deceived, or produced confusion in signers' minds concerning the impact of the proposed amendments. The errors are without substance, there was no attempt to mislead, and the voters expressed their support for the petitions. On balance, the seriousness of the defects do not outweigh the consequences of invalidating the petitions. We nevertheless caution drafters to exercise care in the future because doubts regarding changes in meaning will work against proponents. Accordingly, we grant SOE's motion to dismiss and deny Williams' motion for summary judgment and hold that the signatures obtained on the

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unified single form petition are valid.

V. CONCLUSION

For the foregoing reasons, we hold that the titles, summaries, and texts of the proposed amendments meet the requirements of article XI, section 3 of the Florida Constitution and section 101.161, Florida Statutes, and each is approved for placement on the ballot. This opinion should not be construed as favoring or opposing the passage of the proposed amendments.

It is so ordered.

KOGAN, C.J., and OVERTON, HARDING, WELLS and ANSTEAD, JJ., concur.

GRIMES, J., recused.

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Appendix Part 3

Voter Turnout, November 5, 1996

County	Registered Voters	Turnout	Percent
Alachua	109,835	76,327	69.5%
Baker	12,002	7,123	59.3%
Bay	81,518	52,334	64.2%
Bradford	12,173	8,611	70.7%
Brevard	282,998	200,828	71.0%
Broward	801,087	519,583	64.9%
Calhoun	6,644	4,213	63.4%
Charlotte	92,568	64,033	69.2%
Citrus	74,228	51,837	69.8%
Clay	72,135	48,292	66.9%
Collier	98,226	77,206	78.6%
Columbia	27,419	17,470	63.7%
Dade	851,919	570,586	67.0%
Desoto	13,700	8,144	59.4%
Dixie	9,741	4,690	48.1%
Duval	393,787	261,640	66.4%
Escambia	158,352	109,932	69.4%
Flagler	27,313	20,750	76.0%
Franklin	7,478	4,778	63.9%
Gadsden	24,690	15,031	60.9%
Gilchrist	7,641	5,083	66.5%
Glades	5,547	3,690	66.5%
Gulf	9,716	6,211	63.9%
Hamilton	7,069	3,798	53.7%
Hardee	10,628	6,513	61.3%
Hendry	15,068	9,240	61.3%
Hernando	87,340	60,723	69.5%
Highlands	50,492	34,621	68.6%
Hillsborough	459,249	314,014	68.4%
Holmes	10,821	6,889	63.7%
Indian River	62,509	45,495	72.8%
Jackson	23,527	16,157	68.7%
Jefferson	7,370	5,231	71.0%
Lafayette	3,849	2,399	62.3%
Lake	107,847	76,335	70.8%
Lee	229,330	170,431	74.3%
Leon	141,100	92,413	65.5%
Levy	18,067	11,493	63.6%
Liberty	3,766	2,200	58.4%
Madison	9,702	6,026	62.1%
Manatee	143,258	99,757	69.6%
Marion	134,765	93,181	69.1%
Martin	76,749	55,157	71.9%
Monroe	47,176	32,761	69.4%
Nassau	31,220	21,957	70.3%
Okaloosa	100,458	64,484	64.2%
Okeechobee	17,877	10,376	58.0%
Orange	363,129	234,654	64.6%
Osceola	77,297	47,438	61.4%
Palm Beach	591,413	411,798	69.6%
Pasco	200,530	136,779	68.2%
Pinellas	586,916	384,146	65.5%
Polk	233,048	153,954	66.1%
Putnam	41,099	27,935	68.0%
Santa Rosa	66,831	43,088	64.5%
Sarasota	208,659	151,655	72.7%
Seminole	187,922	115,745	61.6%
St. Johns	68,849	48,978	71.1%
St. Lucie	121,580	74,667	61.4%

Voter Turnout, November 5, 1996

County	Registered Voters	Turnout	Percent
Sumter	22,002	15,802	71.8%
Suwannee	20,124	12,818	63.7%
Taylor	11,852	8,145	68.7%
Union	5,657	3,584	63.4%
Volusia	242,977	162,874	67.0%
Wakulla	12,215	7,375	60.4%
Walton	23,256	15,838	68.1%
Washington	12,567	6,929	55.1%
Totals	8,077,877	5,444,245	67.4%

Department of State

Division of Elections

I, Sandra B. Mortham, Secretary of State of the State of Florida, do hereby certify that the attached is a true and correct copy of the November 5, 1996 election results for Constitutional amendments number five and six, as shown by the records of this office.

Given under my hand and the Great Seal of the State of Florida, at Tallahassee, the Capital, this the 2nd day of April A.D., 1997

Sandra B. Mortham

Sandra B. Mortham
Secretary of State

DSDE B07 (1-95)

Election Results, November 5, 1996

Article II, Section 7 (Initiative)
Responsibility for Paying Costs of Water Pollution

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.

County	Yes	No
Alachua	49,656	21,361
Baker	2,895	3,538
Bay	27,633	16,838
Bradford	4,359	3,630
Brevard	128,796	58,006
Broward	365,024	112,523
Calhoun	1,330	2,080
Charlotte	42,648	18,100
Citrus	34,043	14,782
Clay	28,131	18,147
Collier	51,123	19,748
Columbia	8,720	7,476
Dade	328,425	138,532
Desoto	3,865	3,789
Dixie	2,168	2,129
Duval	147,635	92,366
Escambia	65,614	34,392
Flagler	14,693	4,941
Franklin	2,290	1,773
Gadsden	7,386	5,633
Gilchrist	2,624	2,208
Glades	1,065	2,299
Gulf	2,783	2,704
Hamilton	1,311	1,931
Hardee	2,507	3,592
Hendry	1,776	6,992
Hernando	39,353	17,315
Highlands	18,080	13,911
Hillsborough	203,716	88,528
Holmes	2,236	3,439
Indian River	24,442	17,763
Jackson	6,692	7,507
Jefferson	2,544	2,295
Lafayette	699	1,528
Lake	45,165	26,497

County	Yes	No
Lee	97,600	61,979
Leon	63,329	24,463
Levy	5,943	4,624
Liberty	672	1,135
Madison	2,567	2,977
Manatee	66,604	27,174
Marion	52,631	33,159
Martin	30,865	19,750
Monroe	25,842	5,453
Nassau	12,482	7,799
Okaloosa	39,703	21,789
Okeechobee	3,763	5,998
Orange	149,551	68,474
Osceola	27,876	15,529
Palm Beach	260,529	121,372
Pasco	90,351	37,396
Pinellas	271,423	86,695
Polk	82,304	63,615
Putnam	14,717	9,037
Santa Rosa	27,711	13,696
Sarasota	106,417	34,696
Seminole	74,792	36,272
St. Johns	32,989	13,944
St. Lucie	44,120	25,773
Sumter	8,451	6,079
Suwannee	4,981	6,654
Taylor	2,880	3,935
Union	1,456	1,772
Volusia	109,905	40,920
Wakulla	3,859	3,015
Walton	6,967	6,615
Washington	2,579	4,093
Total	**3,397,286**	**1,594,175**
Percent	**68.1%**	**31.9%**

Article X, Section 17 (Initiative)
Everglades Trust Fund

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.

County	Yes	No
Alachua	45,113	25,454
Baker	2,157	4,251
Bay	19,623	24,693
Bradford	3,275	4,661
Brevard	106,976	82,726
Broward	331,626	141,411
Calhoun	977	2,407
Charlotte	36,641	23,769
Citrus	26,680	21,689
Clay	21,998	24,152
Collier	43,788	25,354
Columbia	6,748	9,108
Dade	275,588	178,173
Desoto	3,074	4,325
Dixie	1,641	2,441
Duval	114,513	123,531
Escambia	51,265	47,822
Flagler	12,936	6,580
Franklin	1,753	2,212
Gadsden	6,189	6,843
Gilchrist	1,865	2,924
Glades	1,070	2,478
Gulf	1,764	3,554
Hamilton	1,004	2,217
Hardee	1,841	4,106
Hendry	1,796	6,925
Hernando	31,143	25,286
Highlands	15,307	16,736
Hillsborough	160,345	122,928
Holmes	1,641	4,097
Indian River	21,248	20,470
Jackson	4,825	9,320
Jefferson	2,067	2,669
Lafayette	529	1,687
Lake	36,852	34,287
Lee	80,059	78,082
Leon	54,011	33,220
Levy	4,736	5,793
Liberty	534	1,263
Madison	1,851	3,624
Manatee	56,726	36,524
Marion	41,349	43,567
Martin	27,231	22,143
Monroe	22,541	8,544
Nassau	9,409	10,654
Okaloosa	30,343	30,586
Okeechobee	3,328	6,420
Orange	122,253	93,900
Osceola	22,284	20,640
Palm Beach	229,297	148,680
Pasco	71,122	54,662
Pinellas	225,851	127,504
Polk	62,842	82,615
Putnam	10,807	12,952
Santa Rosa	20,898	20,303
Sarasota	91,312	48,047
Seminole	61,017	49,112
St. Johns	26,895	19,717
St. Lucie	38,177	31,389
Sumter	6,766	7,781
Suwannee	4,085	7,613
Taylor	2,290	4,490
Union	1,148	2,068
Volusia	90,542	58,355
Wakulla	3,094	3,708
Walton	5,190	8,535
Washington	1,973	4,509
Total	**2,825,819**	**2,108,286**
Percent	**57.3%**	**42.7%**

Appendix Part 4

STATE OF FLORIDA

OFFICE OF ATTORNEY GENERAL

ROBERT A. BUTTERWORTH

November 12, 1996

INFORMATION COPY

96-92

Mr. Samuel E. Poole III
Executive Director
South Florida Water Management District
Post Office Box 24680
West Palm Beach, Florida 33416-4680

Dear Mr. Poole:

You ask the following questions:

1. Does constitutional Amendment #5, requiring those in the Everglades Agricultural Area who cause water pollution to be primarily responsible for paying the costs of pollution abatement require implementing legislation?

2. Does constitutional Amendment #6, creating the Everglades Trust Fund, require implementing legislation?

In sum:

1. While the Legislature may enact provisions implementing Amendment #5, the amendment itself establishes a primary obligation on polluters to pay the costs of abating Everglades pollution regardless of legislative action. The district's duties and responsibilities in ensuring the abatement of water pollution within the Everglades make it the proper party to enforce the rights created by the amendment. The district, therefore, has the duty to require those who are responsible for water pollution within the Everglades Agricultural Area or Everglades Protection Area to be primarily responsible for paying the costs of pollution abatement.

2. Constitutional Amendment #6 does not require implementing legislation since it contains sufficient direction for carrying its purpose into effect without the aid of legislative enactment.

The Supreme Court of Florida has developed the following test for determining whether a constitutional provision is self-executing:

> The basic guide, or test, in determining whether a constitutional provision should be construed to be self-executing, or not self-executing, is whether or not the provision lays down a sufficient rule by means of which the right or purpose which it gives or is intended to accomplish may be determined, enjoyed, or protected without the aid of legislative enactment.[1]

The language used in the constitutional provision itself is the principle criterion to be considered in determining this issue.[2] For example, if the language of the Constitution is directed to the Legislature, or if it appears from the language used and the circumstances of its adoption that subsequent legislation was contemplated to carry it into effect, such a provision would not be self-executing.[3]

The will of the people, however, is paramount in determining whether a constitutional provision is self-executing.[4] As stated by the Supreme Court of Florida in *Gray v. Bryant*,[5]

> [T]he modern doctrine favors the presumption that constitutional provisions are intended to be self-operating. This is so because in the absence of such a presumption the legislature would have the power to nullify the will of the people expressed in their constitution, the most sacrosanct of all expressions of the people.

QUESTION ONE

Constitutional Amendment #5 amends Article II, Section 7, Florida Constitution, by inserting an (a) immediately before the current text, and by adding a new subsection (b), which reads:

> (b) Those in the Everglades Agricultural Area who cause water pollution within the Everglades Protection

> Area or the Everglades Agricultural Area shall be primarily responsible for paying the costs of the abatement of that pollution. For the purposes of this subsection, the terms "Everglades Protection Area" and "Everglades Agricultural Area" shall have the meanings as defined in statutes in effect on January 1, 1996.

With passage of constitutional Amendment #5, the people of Florida have overwhelmingly dictated that those who have polluted the Everglades must be primarily responsible for paying the costs of cleaning up the Everglades.

As discussed above, it is presumed that constitutional amendments are self-executing, the rationale being that the Legislature could otherwise defeat the will of the people. This is particularly so where, as here, the constitutional amendment is proposed by citizen initiative. Therefore, while the Legislature may enact provisions implementing Amendment #5, the amendment itself establishes an obligation on polluters of the Everglades to pay the costs of abating such pollution irrespective of legislative action.

Moreover, the general rule that wherever the law recognizes a right it gives a remedy applies to rights conferred by statutory or constitutional provisions.[6] Thus, where a statute or the constitution creates a new right or obligation and does not prescribe any particular remedy for its enforcement, the party entitled to the benefit of the provision may resort to any common law or statutory remedy that will afford adequate and proper redress. If an appropriate and adequate remedy is not present, the court may fashion a suitable remedy to accomplish the purpose of the law.[7]

This amendment, imposing an obligation on polluters of the Everglades to pay the costs of their pollution, creates an attendant remedy for enforcement of that obligation. Such a remedy may be enforced by any beneficiary of the fulfillment of that obligation.

The South Florida Water Management District (SFWMD) is responsible for administering the Everglades Trust Fund, created by Amendment #6, to be used for the conservation and protection of natural resources and abatement of water pollution in the Everglades Protection Area and the Everglades Agricultural Area.

Moreover, the Legislature has identified SFWMD as the entity authorized "to proceed expeditiously with implementation of" the state's comprehensive program to revitalize the Everglades, including programs and projects to improve water quality and "to pursue comprehensive and innovative solutions to issues of water quality . . . which face the Everglades ecosystem."[8] Section 373.4592, Florida Statutes, specifically makes it the responsibility of SFWMD to "aggressively pursue implementation" of the state's program to restore and protect the Everglades.[9]

Clearly, the district's duties and responsibilities in ensuring the abatement of water pollution within the Everglades make it the proper party to enforce the rights created by Amendment #5. It is the district's responsibility, therefore, to implement the constitutional mandate consonant with its statutory duties to promote Everglades restoration and protection.

Accordingly, I am of the opinion that the South Florida Water Management District has the duty to effectuate the constitutional mandate that those responsible for polluting the Everglades Agricultural Area or Everglades Protection Area pay for the abatement of their pollution.

QUESTION TWO

Constitutional Amendment #6 creates a new section 17 at the end of Article X providing:

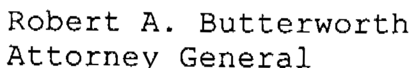
> SECTION 17, Everglades Trust Fund.
>
> (a) There is hereby established the Everglades Trust Fund, which shall not be subject to termination pursuant to Article III, Section 19(f). The purpose of the Everglades Trust Fund is to make funds available to assist in conservation and protection of natural resources and abatement of water pollution in the Everglades Protection Area and the Everglades Agricultural Area. The trust fund shall be administered by the South Florida Water Management District, or its successor agency, consistent with statutory law.
>
> (b) The Everglades Trust Fund may receive funds from any source, including gifts from individuals, corporations or other entities; funds from general

> revenue as determined by the Legislature; and any other funds so designated by the Legislature, by the United States Congress or by any other governmental entity.
>
> (c) Funds deposited to the Everglades Trust Fund shall be expended for purposes of conservation and protection of natural resources and abatement of water pollution in the Everglades Protection Area and Everglades Agricultural Area.
>
> (d) For purposes of this subsection, the terms "Everglades Protection Area," "Everglades Agricultural Area" and "South Florida Water Management District" shall have the meanings as defined in statutes in effect on January 1, 1996.

Amendment #6 establishes the Everglades Trust Fund and provides for the funding of the trust fund. It further designates who administers the fund and relates the purpose for which trust funds may be used. Thus, the amendment contains sufficient direction for its implementation without further action by the Legislature.

Accordingly, I am of the opinion that Amendment #6 is self-executing.

Sincerely,



Robert A. Butterworth
Attorney General

RAB/tgk

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[1] *Gray v. Bryant*, 125 So. 2d 846 (Fla. 1960). *See also*, *Schreiner v. McKenzie Tank Lines,* 408 So. 2d 711 (Fla. 1st DCA 1982), *approved and adopted*, 432 So. 2d 567 (Fla. 1983); Op. Att'y Gen. Fla. 77-136 (1977).

[2] *See generally*, 16 C.J.S. *Constitutional Law* s. 46.

[3] *Id. Cf., Plante v. Smathers*, 372 So. 2d 933 (Fla. 1979); and *Williams v. Smith*, 360 So. 2d 417 (Fla. 1978). *And see*, Op. Att'y Gen. Fla. 91-8 (1991), in which this office concluded that the three-day waiting period for the purchase of handguns was not self-executing since the constitutional provision itself required the Legislature to enact legislation implementing the provision.

[4] *Gray v. Bryant, supra; Schreiner v. McKenzie Tank Lines & Risk Management Services, Inc., supra.*

[5] 125 So. 2d at 851.

[6] *Reynolds v. State*, 224 So. 2d 769 (Fla. 2d DCA 1969), *cert. discharged,* 238 So. 2d 598 (Fla. 1970); 1A C.J.S. *Actions* s. 11c.

[7] *Century Village, Inc., v. Wellington, Etc.,* 361 So. 2d 128 (Fla. 1978); 1A C.J.S. *Actions* s. 11d.

[8] Section 373.4592(1)(b) and (1)(e), Fla. Stat.

[9] *See, e.g.,* s. 373.4592(4)(a), Fla. Stat.