

OA 11-3-97

IN THE SUPREME COURT OF FLORIDA

Case No. 91,193

FILED

SID J. WHITE

OCT 6 1997

Upon a Request from the
Attorney General for an
Advisory Opinion as to the
Validity of an Initiative Petition

CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

IN RE: ADVISORY OPINION
TO THE ATTORNEY GENERAL-
FISH AND WILDLIFE CONSERVATION
COMMISSION

ANSWER BRIEF OF FLORIDA WILDLIFE FEDERATION,
FLORIDA AUDUBON SOCIETY, FLORIDA LEAGUE OF ANGLERS, COASTAL
CONSERVATION ASSOCIATION-FLORIDA, FISH AND WILDLIFE
CONSERVATION COMMITTEE, AND SIERRA CLUB, FLORIDA CHAPTER IN
SUPPORT OF FISH AND WILDLIFE
CONSERVATION COMMISSION INITIATIVE

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SUMMARY OF THE ARGUMENT

The text of the proposed amendment, in its operative clauses describing the authority of the proposed Fish and Wildlife Conservation Commission, closely mirrors the text of the present constitutional charter for the Game and Fresh Water Fish Commission. Consequently the proposed amendment if adopted would not disturb the authority of the Game and Fresh Water Fish Commission over wild animal life and fresh water aquatic life as it is reconstituted in the new commission. Rather the amendment would expand upon the existing model of the Game and Fresh Water Fish Commission by adding marine aquatic life to its purview without altering the nature of that governmental as it is transferred to the new Fish and Wildlife Conservation Commission.

The ballot summary and title accurately and in adequate detail inform the voters of the chief purpose of the proposed amendment without ambiguity or being misleading. The arguments of the Southeastern Fisheries Association are not well founded since the alleged ambiguities in the scope of the effect of the amendment are not defects of the ballot summary but rather challenges to the meaning of the present text of Art. IV, Sect. 9, Fla. Const.

The Fish and Wildlife Conservation Commission Initiative complies with the constitutional single-subject requirement as it possesses a logical and natural oneness of purpose and it does not

substantially alter or perform the functions of multiple branches of government.

ARGUMENT

Interested Parties, Florida Wildlife Federation, Florida Audubon Society, Florida League of Anglers, Coastal Conservation Association-Florida, Fish and Wildlife Conservation Committee, and Sierra Club, Florida Chapter, by and through their undersigned counsel herein answer the Initial Brief of Southeastern Fisheries Association ("Opponents").

I. **BALLOT TITLE AND SUMMARY FOR THE FISH AND WILDLIFE CONSERVATION COMMISSION INITIATIVE COMPLY WITH THE REQUIREMENTS OF §101.161(1), FLA. STAT.**

A. **The Ballot Title and Summary Articulate the Initiative's Chief Purpose in Sufficient Detail**

The ballot title and summary for a proposed amendment meet the requirements of §101.161(1), Fla. Stat., if they are not misleading and provide the chief purpose of the proposed amendment, but they need not provide all of the possible consequences. Indeed this Court has previously explained the standard for compliance with §101.161(1) as follows:

the ballot summary is not required to include all possible effects, nor to explain in detail what the proponents hope to **accomplish**. Rather it is sufficient that the ballot summary clearly and accurately sets forth the general rule to be

applied and informs the voters of the chief purpose of the proposal so that an informed decision is possible.

Advisory Opinion to the Attorney General Re Tax Limitation, 673 So. 2d 864 (Fla. 1996), quoting Grose v. Firestone, 422 So. 2d 303, 305 (Fla. 1982) ; Advisory Opinion to the Attorney General: English-- The Official Language of Florida, 520 So. 2d 11, 13 (Fla. 1988).

Further elaborating on the limits of these requirements, this Court has opined that:

[w]e cannot accept the contention that the omission of certain details could reasonably be expected to mislead the voters. The seventy-five word limit placed on the ballot summary as required by statute does not lend itself to an explanation of all of a proposed amendment's details. Further, many of the details in the instant case could or would not be known unless and until the amendment is adopted and implemented.

Advisory Opinion to the Attorney General Re: Limited Casinos, 644 So. 2d 71, 75 (Fla. 1994). The ballot summary for the Fish and Wildlife Conservation Commission Initiative clearly states the chief purpose as the combination of the Marine Fisheries Commission ("MFC") and the Game and Fresh Water Fish Commission ("GFWFC") into a single commission modeled after the GFWFC with authority over wild animal life as well as marine and freshwater aquatic life subject to certain reservations of power to the legislature. Thus the Opponents' arguments are misplaced when they claim that the Initiative's ballot summary is misleading for want of greater detail of possible consequences of its adoption.

B. The Ballot Title and Summary Accurately and Fairly Inform the Voters of the Scope of the Initiative

The use of the word "conservation" in the ballot title is not misleading as it is part of the name of the Fish and Wildlife Conservation Commission whose creation is the express purpose of the proposed amendment. Nor is the use of the word "conservation" in the ballot summary's description of the powers of the proposed commission misleading as to the scope of that commission's prospective authority. The operative language describing the powers of the proposed commission in the initiative parallels the terms of the present provisions of Art. IV, Sect. 9, Fla. Const. so that the nature of the executive authority of the new commission would be functionally very similar to that of the present constitutionally chartered Game and Fresh Water Fish Commission.'

The deliberate drafting of the proposed amendment to parallel the operative language of the existing constitutional provision authorizing the present Game and Fresh Water Fish Commission

¹ The provisions of paragraphs (b)(1) and (c) of the proposed amendment duplicate the existing text of Art. IV, Sect. 9, Fla. Const. except for the following differences: 1) the scope of the new commission's authority is expanded to include marine aquatic life in addition to wild animal life and fresh water aquatic life, 2) the commission may not be made a sub-unit of another agency, 3) the number of commissioners is increased from five to seven, and 4) the name of the commission is changed to Fish and Wildlife Conservation Commission.

plainly provides for the maximum continuity between the application of existing judicial and administrative precedents to the determination of the character of the proposed commission's authority. Thus, for example, the concentration of the present commission on matters related to conservation of game and fresh water fish as evidenced by the regulations of the commission despite the constitutional direction that the commission "shall exercise the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life," shows that Opponents' complaint of a mismatch between the scope of the summary and the text of the amendment are not well-founded. See, Fla. Admin. Code, Title 39. Rather the summary is wholly consistent with the chief purpose and scope of the text of the proposed amendment. Indeed the conservation-focused purpose of the proposed commission is reinforced additionally by paragraph (a) of the proposed amendment which articulates the guiding policy that marine freshwater and wildlife resources be conserved and managed.

Further paragraph (c) of the proposed amendment provides for certain appropriations to the Fish and Wildlife Conservation Commission which are 'for the purpose of management, protection and conservation of wild animal life, freshwater aquatic life and marine aquatic life." Therefore the text of the proposed amendment authorizes a commission whose mission, function, and existing precedents are all consistent with the scope of authority described

in the ballot summary for the Initiative. Despite Opponents' assertions that the proposed amendment has a much wider scope than articulated in the ballot summary, opponents fail to identify any powers of the proposed commission that are not "pertaining to conservation."

Opponents' mischaracterize the effect of the proposed amendment by stating that it creates an entirely new commission. Rather it expands the scope of authority of the existing Game and Fresh Water Fish Commission by adding marine aquatic life to its purview without altering the constitutional language which has provided the basis of the Game and Fresh Water Fish Commission's authority over wild animal life and freshwater aquatic life for over fifty years. While the number of commissioners is increased the present game and fresh water fish commissioners would be commissioners for the new commission as well for the balance of their terms. Thus the amendment effects a modest increase in the scope of, but not the nature of, the authority of the game and fresh water fish commission in the renamed fish and wildlife conservation commission.

C. The Ballot Summary is not Ambiguous Even if the Initiative Amends a Section of the Constitution with an Alleged Latent Ambiguity

The summary is not ambiguous because it does not define the term 'aquatic life.' Indeed Art. IV, Sect. 9, Fla. Const., contains the term "aquatic life" in its designation of the scope of the authority of the Game and Fresh Water Fish Commission in language that is mirrored by the operative language of the proposed amendment. Opponents urge this Court to see ambiguity in the ballot summary on the basis of an alleged ambiguity already present in the Florida Constitution. The proposed amendment merely expands to marine aquatic life the type of authority already held by the GFWFC over fresh water aquatic life. Hence the meaning of "aquatic life" in the proposed amendment tracks the existing judicial and administrative precedents for the interpretation of the term "aquatic life." To the extent that there remain any unresolved matters of interpretation of the term "aquatic life" as it appears in the present Florida Constitution, those questions are not properly before this Court as this Court's jurisdiction in this matter is limited to the narrow question of whether the ballot summary complies with the requirements of §101.161(1), Fla. Stat. and the single subject requirement.

Opponents' arguments even lack internal consistency on the alleged ambiguity in the term "aquatic life" as it appears in the

proposed amendment. On one hand, they assert that the proposed amendment will give the Fish and Wildlife Conservation Commission sole authority over aquatic plant life based on the provision that "the commission shall exercise the regulatory and executive powers of the state with respect to . . . freshwater aquatic life." However they also assert that "neither the MFC nor the GFWFC have, nor have they ever had, authority to regulate aquatic plant life," Opponent's Initial Brief at 5, even though the GFWFC's constitutional grant of authority is based on the identical language, to wit: "the commission shall exercise the regulatory and executive powers of the state with respect to . . . fresh water life." Thus the proposed amendment does not alter the status quo with respect to existing legislative programs relating to non-marine plant life as administered by the Department of Environmental Protection, pursuant to Chap 369, Fla. Stat., or by the Department of Agriculture, pursuant to Chap. 581, Fla. Stat. Thus the ballot summary is valid as it provides the chief purpose of the amendment without misleading the voters. Advisory Opinion to the Attorney General re: Prohibiting Public Funding of Political Candidates' Campaigns, 693 So. 2d 972, 975 (Fla. 1997).

Opponents argue that the summary fails to include a detailed list of present statutory provisions governing the operations of the MFC which might be abrogated by the proposed amendment upon enactment. However the validity of the ballot summary does not

require the detailing of all possible consequences of the amendment into the 75 word summary. Limited Casinos, 644 So. 2d at 75.

The ballot summary plainly describes the chief and sole purpose of the amendment, which is the combination of the MFC and the GFWFC into a single commission with powers paralleling those of the GFWFC in character but extending additionally to marine aquatic life. The summary accurately and fairly informs the voters of the purpose of the proposed amendment and therefore complies with the requirements of §101.161(1), Fla. Stat. Advisory Opinion to the Attorney General - Fee on the Everglades Sugar Production, 681 So. 2d 1124, 1129 (Fla. 1996).

II. THE AMENDMENT COMPLIES WITH THE SINGLE SUBJECT REQUIREMENT

The constitutional single subject requirement for initiative amendments to the Florida Constitution requires that the amendment have a natural oneness of purpose and not "substantially alter or perform the functions of multiple branches of government." Advisory Opinion to the Attorney General - Save Our Everglades, 636 So. 2d 1336, 1339 (Fla. 1994); Prohibiting Public Funding of Political Campaigns, 693 So. 2d at 975. The proposed amendment manifestly passes the single-subject requirement as it has a

"natural oneness of purpose" and does not substantially impinge upon the functions of multiple branches of government. Id.

The proposed amendment effectively expands on the existing GFWFC without altering its present authority over wild animal life and freshwater aquatic life by extending the same constitutional grant of regulatory and executive authority to include, additionally, marine aquatic life. Hence the proposed amendment does not create an entirely new governmental entity but rather adjusts the jurisdictional fence outward for the present GFWFC to include regulatory and executive authority over marine aquatic life. This adjustment of the scope of authority of the GFWFC and the associated details of implementation cohere so as to exhibit a natural oneness of purpose and thereby satisfy the single-subject requirement. Id.

While the proposed amendment affects the operation of the executive branch of government, it does not substantially perform or alter the functions of the legislative or judicial branches unlike the failed Save Our Everglades Initiative. Save Our Everglades, 636 So. 2d at 1339-40. Opponent's reliance on Advisory Opinion to the Attorney General re People's Property Rights Amendments, 1997 WL 251288 (FLA.), is misplaced as that amendment concerned the regulation of land use and not wild animal life nor aquatic life. Additionally the division of authority between the legislature and the GFWFC over wild animal life and fresh water

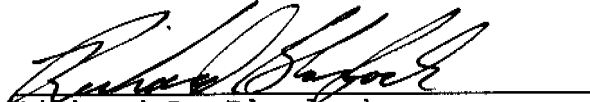
aquatic life is already established in the Constitution and would be unchanged under the proposed amendment except to add marine aquatic life to the new commission's purview.

The proposed amendment has a plainly stated and summarized single subject in the rationalization of fish and wildlife management in the state through the consolidation of their regulation in a single executive agency of the Florida state government. As it demonstrates a natural oneness of purpose and a single subject the Initiative passes the single-subject requirement of Art. XI, Sec. 3, Fla. Const. Prohibiting Public Funding of Political Campaigns, 693 So. 2d at 975.

CONCLUSION

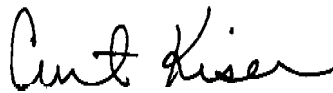
The Proposed Amendment complies with the single-subject requirement as well as the ballot title and summary requirements as previously articulated by this Court. Consequently this Court should issue an advisory opinion certifying the validity of the Initiative and thereby allowing the voters to exercise their power as reserved to them by the Florida Constitution to decide whether to adopt the Fish and Wildlife Conservation Commission amendment.

RESPECTFULLY SUBMITTED t;his 6th day of October, 1997.



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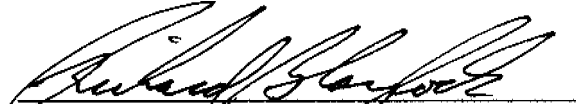
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CERTIFICATE OF SERVICE

The undersigned certifies that a true and accurate copy of the foregoing has been served by first class U.S. mail this 6th **day** of October, 1997 upon Robert A. Butterworth, Attorney General, State of Florida, The Capitol, Tallahassee, Florida 32399-1050, and Frank Santry and Victoria Heuler, Granger, Santry, Mitchell & Heath, P.O. Box 14129, Tallahassee, FL 32317.



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