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Case No. 91,193

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ADVISORY OPINION TO THE ATTORNEY GENERAL RE: FISH
AND WILDLIFE CONSERVATION COMMISSION: UNIFIES
MARINE FISHERIES AND GAME AND FRESH WATER
FISH COMMISSIONS

ANSWER BRIEF FOR THE SOUTHEASTERN FISHERIES ASSOCIATION, INC.,
an interested party.

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PREFACE

The Marine Fisheries Commission will be referred to herein as the "MFC." The Florida Game and Fresh Water Fish Commission will be referred to herein as the "GFWFC." The proposed Florida Fish and Wildlife Conservation Commission will be referred to herein as "the commission," "the new commission" or "the Conservation Commission."

SUMMARY OF ARGUMENT

The ballot title and summary for the proposed amendment to article IV, section 9, Florida Constitution, do not comply with the requirements of section 101.161(1), Florida Statutes. The ballot title and summary lead voters to believe that the Conservation Commission will have power only over matters concerning conservation of aquatic and wild animal life, when in fact the amendment confers on the commission full regulatory power over any matter with respect to aquatic and wild animal life.

The ballot title and summary also fail to inform voters that several checks and balances established by the Legislature regarding the manner in which MFC rules are proposed and adopted will cease to exist if the amendment is adopted. These protections include required approval of MFC rules by the Governor and Cabinet prior to adoption, and the mandatory

consideration by the MFC of eight enumerated factors prior to proposing any rule. See § 370.025(2), Fla. Stat.

The amendment will also effectively repeal requirements attendant to the Governor's appointment of MFC members, such as considering affected interests when making appointments, and ensuring that no single interest group dominates the commission membership. See § 370.026(1), Fla. Stat. The ballot title and summary fail to inform voters of this collateral consequence.

Further, the ballot title and summary are misleading because they purport to inform voters that the amendment's chief purpose is to unify the MFC and the GFWFC, but the amendment does much more than unify these two commissions. The new commission, if created, will have much broader authority to regulate all aspects of aquatic and wild animal life than each commission currently possesses. For instance, the commission will have full regulatory authority over marine endangered species, authority over which the MFC does not currently possess. See § 370.027(1), Fla. Stat.

Finally, the ballot title and summary fail to inform voters of the multitude of existing laws and rules that will necessarily cease to exist if the new commission is created. Having full regulatory authority over all aspects of aquatic and wild animal life, the new commission will have to divine its own rules under its new and broad authority. The Legislature will presumably be divested of its power of regulation in these areas, as will the Department of Environmental Protection and the Department of

Agriculture. No notice of these effects is given to voters through the ballot summary.

The proposed amendment also fails to comply with the single subject requirement of article XI, section 3, Florida Constitution. The amendment contains more than a single subject because, if adopted, it will allow the new commission to perform the functions of multiple branches of government. The amendment itself states that it will have sole executive and regulatory authority over aquatic and wild animal life in the state. The amendment also declares policy regarding the regulation of aquatic and wild animal life in Florida, and confers on the commission the duty of articulating and implementing state policy in the future regarding the regulation of aquatic and wild animal life. These are legislative functions. The act of carrying out the stated policies is an executive function.

The Court has previously stricken initiative amendments from the ballot where the amendment would substantially affect the powers of the executive and legislative branches. See Advisory Opinion to the Attorney General re: People's Property Rights Amendments, 22 Fla. Law Weekly S271 (May 15, 1997).

ARGUMENT

I.

THE BALLOT TITLE AND SUMMARY FOR THE PROPOSED AMENDMENT TO ARTICLE IV, SECTION 9, FLORIDA CONSTITUTION, DO NOT COMPLY WITH SECTION 101.161, FLORIDA STATUTES.

As the proponents correctly point out, this court is required to review every initiative petition to be submitted to popular vote when such review is requested by the state Attorney General. The scope of the Court's review is limited to testing the sufficiency of the ballot title and summary, and whether the amendment itself contains only a single subject. See § 101.161(1), Fla. Stat. (ballot summary requirements), and Art. XI, sec. 3, Fla. Const. (single subject requirement).

Regarding the ballot title and summary, **the** Court must determine whether, combined, title and summary "state in clear and unambiguous language the chief purpose of the measure," Askew v. Firestone, 421 So. 2d 151, 154-55 (Fla. 1982); whether they **put voters on notice as to the issues contained in the amendment;** whether the information provided will insure that voters will not be misled as to the amendment's purpose; and whether they provide voters with enough information to cast an intelligent and informed ballot. Advisory Opinion to the Attorney General - Save Our Everslades, 636 So. 2d 1336, 1341 (Fla. 1994).

The ballot title for the proposed amendment to article IV, **section 9, is as follows:**

Fish and Wildlife Conservation Commission: Unifies Marine Fisheries and Game and Fresh Water Fish Commissions.

See Appendix "A" (letter dated August 13, 1997 from Attorney General to the Court with ballot title and summary, and proposed amendment, language).

The ballot summary for the proposed amendment is as follows:

Unifies the Marine Fisheries Commission and the Game and Fresh Water Fish Commission to form the Florida Fish and Wildlife Conservation Commission; provides for Commission members and for Governor appointment and Senate confirmation thereof; authorizes the Commission to exercise executive and regulatory powers of the state pertaining to conservation of freshwater and marine aquatic life and wild animal life; allows for legislation in certain **areas**; provides for appropriations of license fees to Commission.

Id.

The ballot title and summary for the proposed amendment to article IV, section 9, are not accurate and do not inform voters of the proposal's chief purpose. Further, the ballot title seriously mislead voters as to what they are being asked to approve, and the ramifications if the proposal is adopted. The ballot title and summary fail the requirements of section 101.161(1), Florida Statutes, and the they, and the proposal, should be stricken from the ballot.

- A. The ballot title and summary lead voters to believe that the amendment concerns only conservation.

The ballot summary for the proposal confers on the new commission "executive and regulatory powers of the state pertaining to conservation¹ of freshwater and marine aquatic life and wild animal **life.**" (emphasis added). The title also denotes that conservation is the chief purpose of the amendment ("Fish and Wildlife Conservation Commission). Combined, the ballot title and summary purport to inform voters that a new commission will be created with the power to act to conserve aquatic and wild animal life. Conservation is a narrow scope of power.

Compare the language of the ballot title and summary with that of the amendment itself, which states in proposed paragraph (c), that "[t]he Commission shall exercise the regulatory and executive powers of the state with respect to wild animal life, freshwater aquatic life and marine aquatic life" (emphasis added). There is no mention anywhere in the text of the amendment that the scope of the new commission's power will be limited to conservation. To the contrary, the commission will have the sole and unfettered power in the state "**with respect to,**" related to, regarding, or concerning² all aquatic and wild animal life. The commission's purview under the plain terms of the amendment will not be limited to the conservation of life.

¹ Defined as the careful preservation and protection of something, **especially:** planned management of a natural resource to prevent exploitation, destruction, and neglect. See The Merriam Webster Collegiate Dictionary (Tenth Ed.) (1997).

² The terms "**with respect to,**" "regarding," "**in reference to,**" "pertaining to," and "concerning" are synonymous, and are generally defined as relating or referring to a particular thing or situation, or having influence on. See The Merriam Webster Collegiate Dictionary (Tenth Ed.) (1997).

For example, according to the amendment itself, the commission would have the power to regulate non-conservation matters concerning wildlife as personal pets, 39 F.A.C. 6.0023; taking or possessing wildlife or freshwater fish for scientific or educational purposes, 39 F.A.C. 9.002; possession of dead animals by taxidermists, 39 F.A.C. 12.004; the capture and destruction of nuisance alligators, 39 F.A.C. 25.003; disease-carrying fish or wildlife, 39 F.A.C. 4.005; and falconry, 39 F.A.C. 9.005, to name a few.

The Court has previously stricken amendments from the ballot for inconsistencies between the ballot title and summary and the text of the amendment. In Advisory Opinion to the Attorney General re: Stop Early Release of Prisoners, 642 So. 2d 724 (Fla. 1994), the Court struck the amendment from the ballot, in part, because the ballot title and summary did not accurately inform voters as to the scope of the amendment. The ballot summary under review advised voters that the amendment would "ensure" that prisoners would serve at least 85% of their sentences. Id. at 725. The text of the amendment, however, stated that the amendment would not prohibit the operation of pardon and clemency, exceptions to the 85% rule. Id. The Court found the ballot summary to be "inaccurate and seriously misleading" because of the discrepancy between what the ballot summary stated and what the amendment itself provided. Id. at 727.

The Conservation Commission ballot title and summary are also inaccurate and misleading. The title and summary clearly

provide that the new commission will **have** regulatory power regarding conservation, whereas the amendment itself contains no such limitation. If the ballot title and summary are to inform voters in order to **enable** them to cast an intelligent ballot, how can voters **make** an intelligent decision when the ballot title and summary say "**this** is a conservation commission," but a "**yes**" vote would empower the commission to regulate all matters related to aquatic or wild animal life? See Advisory Opinion to the Attorney General - Save Our Everglades, 636 So. 2d 1336, 1341 (Fla. 1994) (ballot title and summary misleading as to effect of amendment where title and summary implied that Everglades needed to be "**saved**," versus text of amendment which stated that Everglades needed to be "**restored**.") .

B. The ballot title and summary fail to disclose the repeal of checks and balances applicable to MFC rules.

The legislature created the MFC and delegated to it rule-making authority over marine fisheries, with the exception of endangered species and regulation of fishing gear in residential, manmade saltwater canals. § 370.027(1), Fla. Stat. Prior to adoption, MFC rules have to pass through a two-tiered protective system: first, all rules adopted by the MFC must be consistent with eight enumerated standards³, § 370.025(2), Fla. Stat.; and

³ Such as, basing rules on the best biological, sociological, and economic information available; allowing for reasonable means and quantities of annual harvest; and ensuring that rules are

second, no rule **may** be adopted until approved by the Governor and Cabinet. § 370.027(3) (a), Fla. Stat.

When a rule of the MFC is ready for final adoption, the MFC is required by statute to submit the proposed rule to the Governor and Cabinet for approval or disapproval.

§ 370.027(3) (a), Fla. Stat. If the Governor and Cabinet disapprove a rule, it **was** withdrawn. Only if the rule is approved may the MFC file the rule for adoption. Id.

The ballot title and summary for the proposed amendment do not make voters aware that MFC rules, unlike rules of the GFWFC, must pass through the Governor and Cabinet before they may be submitted for adoption. Voters are also not advised through the ballot title and summary that, if the amendment passes and the MFC and GFWFC are replaced by the new commission; all existing statutes and rules regarding regulation of aquatic and wild animal life will be void.

Although not expressly repealing existing laws and regulations, the amendment creates a new commission with its own regulatory powers. The amendment does not provide for the adoption of all existing rules and statutes **as** rules of the new commission⁴; so, presumably, the existing laws and rules as they pertain to what will be defunct commissions (the MFC and GFWFC) will be ineffective. The new commission will be considered a

fair and equitable to all the people of the state. See Appendix "A,"

⁴ See e.g. § 20.255, Fla. Stat. (transferring to new agency, Department of Environmental Protection (DEP), all existing **laws**, rules or decrees of two agencies (Department of Environmental

constitutionally-created state agency and will have the rights and obligations of any other state agency. See Moreno v. Aldrich, 113 So. 2d 406 (Fla. 2d DCA 1959) (GFWFC is a state agency).

Therefore, the strictures attendant to adoption of MFC rules will be gone if the amendment is approved. In order to cast an intelligent and informed ballot, voters should be informed through the ballot title and summary that a collateral effect of the amendment will be that the Governor and Cabinet will no longer be required to approve proposed rules related to saltwater fisheries.

Similarly, voters will not know through the ballot title and summary that the new commission will not be required to adopt rules regarding saltwater fisheries consistent with eight separate factors⁵. See § 370.025(2), Fla. Stat. The Legislature determined it to be the policy of the state that these eight factors were vital to ensuring that rules would be based on the best available information, would emphasize protection and enhancement of the marine environment, and would provide for optimum sustained benefits and use of marine resources for all people of the state. § 370.025(1), Fla. Stat.

The commission can choose to adopt many existing statutes and rules as its own, or it can choose not to. Voters must be made aware that current guidelines and protections regarding saltwater fisheries will become void upon the effective date of

Regulation and Department of Natural Resources) which were abolished to form DEP).

the amendment and that the commission will be under no obligation to carry on the policies previously established by the Legislature.

C. The ballot title and summary fail to disclose
repeal of mandatory guidelines to be used by
Governor when appointing MFC members.

As it currently exists, section 370.026(1), Florida Statutes, provides that the Governor shall appoint each of seven members of the MFC, and "shall consider affected interests when making appointments to the commission." The statute further provides that "[n]o single interest group shall dominate the membership of the commission." Id.

Because of the repeal of existing statutes and rules if the amendment is adopted, the Governor will no longer be required to consider affected interests in appointing members to the new commission, nor will the Governor be required to balance commission members so that no single interest group will dominate. The proposed amendment provides that the Governor shall appoint seven members to the new commission (after all existing commissioners' terms have run), but provides no further guidelines as to how those members should be appointed or what factors should be considered.

⁵ See Appendix "B."

The existing protections in appointing members to the MFC are yet additional checks and balances which will be abolished by the amendment, but of which voters will have no awareness.

D. The ballot title and summary are misleading because the amendment does not simply "unify" the MFC and GFWFC.

The ballot title and summary both declare that the amendment will unify the MFC and the GFWFC. The term "unify" means that the existing commissions, with their existing regulatory powers, will be combined into one system or body⁶. However, the new commission will have power much broader than the powers each commission now possesses.

For instance, the amendment explicitly provides that the new commission will have "~~the~~ regulatory and executive powers of the state with respect to wild animal life, freshwater aquatic life and marine aquatic life." (emphasis added). The MFC currently has authority to regulate marine life, but this authority does not include regulation of endangered marine life, marine plant life, or the use of fishing gear in residential, manmade saltwater canals. See § 370.027(1), Fla. Stat. The MFC never had regulatory authority over any aquatic plant life - this power **was** held jointly by the Department of Environmental

⁶ See The Merriam Webster Collegiate Dictionary (Tenth Ed.) (1997).

Protection and the Department of Agriculture. See Chapters 369 and 581, Florida Statutes.

Notwithstanding that the ballot title and summary falsely purport to restrict the scope of the amendment to conservation, the title and summary also state that the commission will have the "executive and regulatory powers of the state pertaining to conservation of freshwater and marine aquatic life" The ballot title and summary lead voters to believe that the MFC currently has the power to regulate all matters "pertaining to" marine aquatic life. This is simply not true. The MFC's powers are limited, as described above.

The ballot title and summary are flying under false colors to have voters believe that the MFC currently has as broad of authority as the new commission, if created, will have and that all the amendment will do is simply combine the existing powers of the MFC and the GFWFC.

E. The ballot title and summary fail to disclose the myriad of statutes and rules that will cease to exist if the new commission is created.

The Conservation Commission amendment and its ballot summary also fail to notify voters that a myriad' of laws and rules will

⁷ While not an exhaustive list, this includes the following statutes: Chapter 370 (Saltwater Fisheries); Chapter 372 (Wildlife); Chapter 369 (Conservation); Chapter 581 (Plant Industry); Chapter 597 (Aquaculture); Chapter 253 (State Lands); Chapter 258 (State Parks and Preserves); and Section 285.09 (Rights of Miccosukee and Seminole Tribes with respect to Hunting, Fishing, and Frogging).

become ineffective upon passage of the proposed amendment. This omission will mislead voters about the total effect of the amendment and prevent them from casting an intelligent ballot. See Askew v. Firestone, 421 So. 2d 151, 155 (Fla. 1982) (voters considering constitutional changes "must be able to comprehend the sweep of each proposal from a fair notification in the proposition itself that it is neither less nor more extensive than it appears to be.").

Simple language could have been included in the ballot summary to tell voters that the amendment will "repeal existing rules and laws regarding regulation of aquatic and wild animal life." Voters will not be aware of the effective repeal of the multitude of laws and rules regarding aquatic and wild animal life.

Voters will also not be informed about how the state will regulate its aquatic and wild animal resources in the interim between passage of the amendment and adoption by the commission of its own rules. Will the Legislature enact a law giving the commission authority to promulgate rules, and if so, when will

It also includes the following rules: Title 39, F.A.C. (GFWFC rules); Title 18, F.A.C. (Board of Trustees of the Internal Improvement Trust Fund); Title 29, F.A.C. (Regional Planning Council); Title 46, F.A.C. (MFC rules, of which there are close to 200); Chapter 62N-22, F.A.C. (Manatee Sanctuary Act); Chapter 62D-15, F.A.C. (Myakka River Wild & Scenic River Rule); Chapter 62R-1, F.A.C. (Permits for Collection and Possession of Indigenous Saltwater Animals for Experimentation, Scientific, Educational or Exhibitional Purposes); Chapter 62R-5, F.A.C. (Reporting Requirements for Marine Fisheries Information System); Chapter 62R-2, F.A.C. (Permit for Use of Prohibited Fishing Gear, Equipment, and Methods for More Efficient Use of the Offshore Fisheries Resources); Chapter 62R-18, F.A.C. (Spiny

that occur? Does the Legislature have to give the commission authority, or does the amendment itself confer inherent authority to adopt rules'? If the commission must wait for the Legislature to grant it rule-making authority, will the public be able to act in any manner it chooses regarding aquatic and wild animal life until laws are enacted and rules adopted? Will this create a window during which aquatic and wild animal life, and the public, will not be protected?

None of these questions are answered by the ballot summary or the amendment itself and, without answers to these questions, voters will not be able to make an informed decision about whether or not to vote to create the new commission and repeal all existing rules and laws under the authority of the old commissions. See Advisory Opinion to the Attorney General - Restricts Laws Related to Discrimination, 632 So. 2d 1018, 1021 (Fla. 1994) (finding that the ballot title and summary failed to comply with section 101.161, Florida Statutes, in that neither the ballot summary nor the amendment notified voters of the myriad of laws and rules that would be affected).

Lobster Trap Certificate Program); and Chapter 62R-21, F.A.C. (Vessel Corridors (for prohibited nets)).

⁸ The commission will become a separate state agency and will presumably be required to comply with Chapter 120, Florida Statutes, but neither the ballot summary nor the amendment provides clarification on this.

II.

THE PROPOSED AMENDMENT TO ARTICLE IV, SECTION 9, FLORIDA CONSTITUTION, DOES NOT COMPLY WITH THE SINGLE SUBJECT REQUIREMENT OF ARTICLE XI, SECTION 3, FLORIDA CONSTITUTION.

Pursuant to article IV, section 10, Florida Constitution, and section 16.061, Florida Statutes, the Attorney General is required to request the Court's review of any initiative petition to determine, in addition to ballot summary sufficiency, whether the proposed constitutional amendment is limited to a single subject, as required by article XI, section 3, Florida Constitution'.

The test for whether an initiative proposal contains only a single subject includes "a determination of whether the proposal affects a function of government." Advisory Opinion to the Attorney General - Save Our Everglades, 636 So. 2d 1336, 1339-40 (Fla. 1994). To meet the single subject requirement, no proposal may substantially alter or perform the functions of multiple branches of government. Id. at 1340. In Everslades, the Court struck the proposal from the ballot for single subject violations because the amendment would have performed the functions of multiple branches of government. Id. The Court found that the Everglades proposal would have performed a legislative function by implementing a public policy decision of statewide significance. The amendment provided for establishment of a

⁹ Article XI, section 3 provides that each amendment proposed through initiative shall embrace but one subject and matter directly connected therewith.

trust to restore the Everglades, and provided for funding and operation of the trust. Id.

The Conservation Commission proposal also attempts to implement statewide public policy. The proposal itself makes a policy statement that regulation of aquatic and wild animal life should be governed exclusively by the Conservation Commission, a state agency unto itself. This policy statement is found in paragraph (a) of the proposal, and states:

The marine, freshwater and wildlife resources of the State of Florida belong to all of the people of the state and should be conserved and managed for the benefit of the state, its people and future generations.

The proposal intends that conservation and management of these resources be taken over by a single entity, the Conservation Commission. Implementation of such significant statewide public policy is traditionally a legislative function. Id.

The proposal also performs the legislative function of setting or **changing** policy regarding marine fisheries. As previously discussed herein, the Legislature provided for several types of protection regarding the adoption of rules related to marine fisheries. The Legislature's policy declarations under Chapter 370, Florida Statutes, will be superseded if the amendment is adopted.

The Legislature will be divested of power or control over **marine** life and will have no authority to set policy related to marine, or any other type of aquatic life¹⁰. In Airboat Assoc.

¹⁰ The only power the Legislature will retain is that of enacting statutes for license fees for the taking of wild animal

of Fla., Inc. v. Fla. Game and Fresh Water Fish Comm'n, 498 So. 2d 629, 630 (Fla. 3d DCA 1986), the court of appeal refused to review rules adopted by the GFWFC because it believed the rules to be tantamount to legislative acts, which acts were not subject to review by the judiciary. The GFWFC adopted rules which severely restricted the use of hunting dogs and all terrain vehicles in the Big Cypress Wildlife Management Area.

The court in Airboat held that the GFWFC was not a statutorily created administrative agency as defined in the Administrative Procedures Act, and that acts of the GFWFC were not subject to appellate review. Id. at 632. Although it did not address the constitutional limitation on the separation of powers, the court determined that rules of the GFWFC were tantamount to legislative acts and, like acts of the Legislature, were not reviewable. Id. The court dismissed the appeal for lack of jurisdiction to review rules which were effectively legislative acts. Id. See also Beck v. Game and Fresh Water Fish Comm'n, 33 So. 2d 594 (Fla. 1948) (amendment creating GFWFC vested in commission exclusive power over **game** and fresh water fish and divested Legislature of power in this area).

The Conservation Commission will equally be clothed with legislative power, which is a violation of the single subject requirement of article XI, section 3, Florida Constitution. The Legislature will retain some power, such as enacting laws in aid of the commission, but which cannot conflict with the authority

and aquatic life, and for penalties for violations of commission regulations. See paragraph (c) of proposed amendment to article

of the commission under the proposed amendment. See paragraph (c) of proposed amendment to article IV, section 9, Fla. Const. The Legislature will also have the limited authority to prescribe license fees for the taking of aquatic and wild animal life, and prescribe penalties for violations of the commission's regulations. Id.

In addition to performing functions of the legislative branch, the proposed amendment performs functions of the executive branch. The proposal itself states that the commission will exercise the regulatory and executive powers of the state regarding wild animal and aquatic life. See paragraph (c) of proposed amendment to article IV, section 9, Fla. Const.

Proponents of the Conservation Commission amendment are intimating in their Initial Brief that the current language of article IV, section 9, Florida Constitution, meets the single subject requirement and that, because the proposed amendment contains very similar language, the proposed amendment must also meet the single subject requirement. Although this Court reviewed and approved article IV, section 9, Florida Constitution, in 1944 on several grounds, the Court did not review it for conformance with a single subject requirement. See Sylvester v. Tindall, 18 So. 2d 892 (Fla. 1944). As initially proposed, and as later amended in 1974, article IV, section 9, Florida Constitution, was proposed via the Legislature and was not subject to the single subject requirement of article XI, section 3, Florida Constitution. See Everslades, 636 So. 2d at

1341, n.2 (argument that Everglades amendment was no more violative of the single subject requirement than was the amendment creating the GFWFC was without merit because amendment creating GFWFC was proposed by the Legislature and single subject requirement did not apply). Thus, proponents' argument must fail.

The proposed amendment violates the single subject requirement because it impacts the power over regulation of marine aquatic life which is currently shared by at least two executive agencies - the Department of Environmental Protection and the Department of Agriculture. See Chapters 369, 370, 372, and 581, Florida Statutes. The power of the MFC was more narrow than the power of these executive agencies as related to regulation of marine aquatic life. The MFC was created to regulate saltwater fisheries, but the Legislature specifically reserved to itself regulatory power over endangered saltwater species, and over species in residential, manmade canals. See § 370.027, Fla. Stat. Further, the MFC never had regulatory authority over any aquatic plant life - this power was held jointly by the Department of Environmental Protection and the Department of Agriculture. See Chapters 369 and 581, Florida Statutes.

The proposed amendment will destroy the regulatory power of these executive agencies over the aspects of marine life which they currently regulate. Again, this amendment does not simply "unify" the MFC and the GFWFC, but it combines all regulatory

power held by the MFC, the GFWFC, the Department of Environmental Protection, and the Department of Agriculture and places the sole regulatory power over aquatic and wild animal life in the proposed commission.

The Court struck the ballot and proposed initiative regarding the Everglades restoration amendment because the amendment allowed the Everglades trust to perform legislative and executive functions. The proposed Conservation Commission amendment is no different in its performance of the functions of multiple branches of government. See also Advisory Opinion to the Attorney General re: People's Property Rights Amendments, 22 Fla. Law Weekly S271 (May 15, 1997) (substantial impact of amendment on legislative and executive branches of government was violation of requirement that initiative proposal contain only single subject); compare Advisory Opinion to the Attorney General re: Prohibiting Public Funding of Political Candidates' Campaigns, 693 So. 2d 972 (Fla. 1997) (single subject requirement met where amendment to limit candidate funding affected multiple branches of government, but did not substantially affect the functions of multiple branches).

The proposed amendment also lacks a "oneness of purpose" required by the single subject rule. Id. at 1341. There is no "singularity of purpose," as urged by the proponents in their initial brief, page 10, because the ballot title and summary and amendment language propose two different things: should a new commission be created to deal with conservation issues related to

aquatic and wild animal life, or should a commission be created to deal with all issues related to aquatic and wild animal life? Some voters may believe there should be one commission created with authority only regarding conservation matters, but would not vote for a measure conferring authority over all matters related to aquatic and wild animal life¹¹. The combined wording of the ballot title and summary and the amendment force voters to adopt the entire amendment even if all they want is for one commission to control conservation of aquatic and wild animal life.

CONCLUSION

The ballot title and summary will mislead voters and fail to inform them of the proposed amendment's serious collateral consequences. Voters will be unable to make an intelligent and informed decision at the ballot box based on the ballot summary and title. Further, the amendment creates a commission with the power to perform functions of multiple branches of government and, therefore, fails the single subject requirement of article XI, section 3, Florida Constitution.

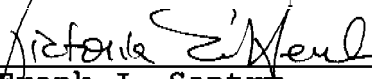
The proposed amendment to article IV, section 9, Florida

¹¹ This harkens back to the problems with the ballot title and summary, previously discussed herein.

Constitution, and its ballot title and summary, should be stricken from the ballot.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Answer Brief for Southeastern Fisheries Association, Inc. was sent by U.S. Mail to Richard Blaylock and David Guest, **EarthJustice** Legal Defense Fund, Post Office Box 1329, Tallahassee, Florida, 32302; to Curt Kiser, Fish and Wildlife Conservation Committee, 315 S. Calhoun Street, Suite 600, Tallahassee, Florida 32301; and to David Gluckman, 541 Old Magnolia Road, Crawfordville, Florida, 32327, on October 6, 1997, and that a true and correct copy was HAND DELIVERED to the Florida Attorney General, The Capitol, Tallahassee, Florida 32399-1050, on the 7th day of October, 1997.



Attorney