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IN THE SUPREME COURT OF FLORIDA

Case No. 91,193

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

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

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INITIAL 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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Richard L. Blaylock  
Florida Bar No. 0086878  
David G. Guest  
Florida Bar No. 0267228  
EarthJustice Legal Defense Fund  
Post office Box 1329  
Tallahassee, FL 32302  
(850) 681-0031

**Attorneys for Florida Wildlife  
Federation, Florida Audubon  
Society, Florida League of  
Anglers, Sierra Club, Florida  
Chapter, Coastal Conservation  
Association-Florida, and Fish  
and Wildlife Conservation  
Committee**

Curt Kiser  
Fish and Wildlife  
Conservation Committee  
315 S. Calhoun, Ste 600  
Tallahassee, FL 32301  
(850) 425-5632

**Attorney for Fish and Wildlife  
Conservation Committee**

David Gluckman  
541 Old Magnolia Road  
Crawfordsville, FL 32327  
(850) 421-0152

**Attorney for Florida League  
of Anglers**

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## STATEMENT OF THE CASE AND FACTS

The above-captioned matter is before the Court upon an August 13, 1997 request from the Attorney General [App. 1-61, submitted in accordance with the provisions of Article IV, Section 10, Fla. Const. and § 16.061(1), Fla. Stat. (1996), for an advisory opinion as to the validity of an initiative petition circulated pursuant to Article XI, Section 3, Fla. Const.. The initiative petition [App. 7] proposes to amend Article IV, Section 9 of the Florida Constitution and thereby unify the Marine Fisheries Commission and the Game and Fresh Water Fish Commission to form the constitutionally chartered Fish and Wildlife Conservation Commission.

The Attorney General seeks a determination as to whether the proposed amendment meets the "single-subject" requirement of Article XI, Section 3, Fla. Const. and the ballot title and summary requirements of § 101.161(1), Fla. Stat. The Attorney General has advised the Court that on August 4 1997, the Florida Secretary of State certified, pursuant to § 15.21, Fla. Stat., by letter, that the proponents of the proposed Fish and Wildlife Conservation Commission amendment had met the preliminary procedural requirements of § 15.21, Fla. Stat., for transmission to the Attorney General, and therefore the proposed amendment was ripe for evaluation by the Florida Supreme Court for compliance with Article XI, Section 3, Fla. Const., and § 101.161(1), Fla. Stat.

The Attorney General expressed the opinion that since the ballot title and summary of the proposed amendment "substantially advise

the voters of the chief purpose of the proposed amendment, they appear to satisfy the requirements of section 101.161, Fla. Stat."

[App. 4] In light of the Court's advisory opinion in Advisory Opinion to the Attorney General--Restricts Laws Related to Discrimination, stating that:

to ascertain whether the necessary 'oneness' of purpose exists, we must consider whether the proposal affects separate functions of government and how the proposal affects other provisions of the constitution,

632 So. 2d 1018, 1020 (Fla. 1994), the Attorney General stated the following:

{t}he proposed amendment appears to embrace but one subject, i.e., the creation of a commission to conserve and manage marine, freshwater and wildlife resources of the state, and matters directly connected therewith.

[App.5].

On August 27, 1997, this Court issued an Interlocutory Order [App. 8-11] instructing interested parties as to the schedule for briefing and oral argument on the matter of whether the proposed amendment complies with Article XI, Section 3, Fla. Const. and whether the ballot title and summary meet the requirements of §101.161(1), Fla. Stat. Pursuant to that order, Florida Wildlife Federation, Florida Audubon Society, Florida League of Anglers, Coastal Conservation Association-Florida, Fish and Wildlife Conservation Committee, and Sierra Club, Florida Chapter submit, through undersigned counsel, this initial brief in support of the validity of the Fish and Wildlife Conservation Commission initiative.

Florida Wildlife Federation, Florida Audubon Society, and Florida League of Anglers, and Coastal Conservation Association are all

Florida non-profit corporations whose purposes include education, study, recreation, and advocacy involving marine, fresh water and terrestrial wildlife resources in the state of Florida. The Sierra Club, Florida Chapter is a chapter of the Sierra Club, a non-profit California corporation, dedicated to education, study, recreation, and advocacy involving marine, fresh water and terrestrial wildlife resources in the state of Florida and elsewhere. The Coastal Conservation Association-Florida is a chapter of the Coastal Conservation Association, a non-profit Texas corporation whose purposes include education, study, recreation, and advocacy involving marine, fresh water and terrestrial wildlife resources in the state of Florida and elsewhere. The Fish and Wildlife Conservation Committee is the sponsoring organization for the proposed Fish and Wildlife Conservation Commission Initiative before the Court in this matter. Consequently, the Florida Wildlife Federation, Florida Audubon Society, Florida League of Anglers, Coastal Conservation Association-Florida, Fish and Wildlife Conservation Committee, and Sierra Club, Florida Chapter are all interested parties with respect to the amendment of the Florida Constitution as it affects state regulation and management of aquatic life and terrestrial wildlife resources.

## SUMMARY OF THE ARGUMENT

The only issues presented for resolution by this Court are whether the text of the proposed amendment initiative complies with the single-subject requirement and whether the ballot title and summary comply with the requirements of § 101.161(1), Fla. Stat. This Court should approve the validity of the proposed amendment initiative absent a showing that it is clearly and conclusively defective with regard to the single-subject rule or the ballot title and summary.

This proposed amendment manifestly complies with the single-subject rule, which requires that the proposed amendment have a "logical and natural oneness of purpose." The Fish and Wildlife Conservation Commission Initiative plainly amends only one portion of the Constitution and in its functional effect, serves solely to expand the jurisdiction of the already constitutionally chartered Game and Fresh Water Fish Commission to include responsibility for marine aquatic life by merging the Game and Fresh Water Fish Commission with the Marine Fisheries Commission. Additionally, the proposed amendment does not constitute logrolling as it poses no policy dilemma for voters through the combination of multiple provisions. All elements of the proposed amendment relate to the implementation of the amendment's singular purpose of unifying state regulatory and executive authority over aquatic life and wild animal life in one agency.

The ballot title and summary meet both the word count limitations and the substantive requirements of § 101.161(1), Fla.



Stat. The summary is not misleading in its delivery of fair notice to the voters of the chief purpose and effects of the proposed amendment.

## ARGUMENT

### I. THE PROPOSED AMENDMENT INITIATIVE IS VALID AND MEETS THE REQUIREMENTS FOR PLACEMENT ON THE BALLOT

Pursuant to Article V, Section 3(b)(10) and Article IV, Section 10 of the Florida Constitution this Court has jurisdiction to render advisory opinions to the Attorney General for the purpose of evaluating the compliance of proposed amendments with the requirements of Article XI, Section 3 and §101.161(1), Fla. Stat. On August 13, 1997, the Attorney General petitioned this Court for an advisory opinion concerning an initiative petition to amend the Florida Constitution entitled "**Fish and Wildlife Conservation Commission: Unifies Marine Fisheries and Fresh Water Fish Commission,**" [hereinafter "**the Initiative**" or the "**Proposed Amendment**"]. The only issues for resolution in the above-captioned matter are those identified by this Court's Interlocutory Order of August 27, 1997, to wit: (i) the compliance of the Proposed Amendment with the single-subject requirement of Article XI, Section 3, and (2) the compliance of the Initiative with the ballot title and summary requirements of §101.161(1), Fla. Stat. See Advisory Opinion to the Attorney General re Stop Early Release of

Prisoners, 661 So. 2d 1204, 1206 (Fla. 1995); Advisory Opinion to the Attorney General re Casino Authorization, Taxation, and Resulation, 656 So. 2d 466, 468 (Fla. 1995); Advisory Opinion to the Attorney General re Funding For Criminal Justice, 639 So. 2d 972, 973 (Fla. 1993). In reviewing the validity of proposed amendments, this Court has affirmed that the Court must not intrude upon the right of the people to vote on a proposed amendment absent a showing that it is "clearly and conclusively defective." Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982); Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2d 337, 339 (Fla. 1978); Weber v. Smathers, 338 So. 2d 819, 821 (Fla. 1976).

As this Court has often noted, this Court "has no authority to rule on the merits of a proposed amendment." Advisory Opinion to the Attorney General re Florida Locally Approved Gaming, 656 So. 2d 1259, 1262 (Fla. 1995); Advisory Opinion to the Attorney General re Tax Limitation, 644 So. 2d 486, 489 (Fla. 1994). Hence, neither the wisdom nor the draftsmanship of the Proposed Amendment are at issue before this Court. See Weber, 338 So. 2d at 822; Advisory Opinion to the Attorney General re Tax Limitation, 644 So. 2d 486, 489 (Fla. 1994).

**A. The Proposed Amendment Complies with the Single-subject Requirement of Art. XI, Section 3, Fla. Const.**

Article XI, Section 3, Fla. Const. allows for the amendment of the constitution as follows:

The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment

shall embrace but one subject and matter directly connected therewith.

To meet this constitutional limitation on the power to amend the constitution by initiative, the proposed amendment must "manifest 'a logical and natural oneness of **purpose.**'" 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, 681 So. 2d 1124, 1127; Fine v. Firestone, 448 So. 2d 984, 990 (Fla. 1984). "**Unity** of object and plan is the universal **test.**" Florida Locally Approved Gaming, 656 So. 2d at 1263 (Fla. 1995) (quoting with approval City of Coral Gables v. Gray, 19 So. 2d 318, 320 (Fla. 1944)).

This Court has often characterized the single-subject requirement as:

a rule of restraint designed to guard against unbridled 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.

Fee on Everglades Sugar Production, 681 So. 2d at 1127; see also, e.a., In re Advisory Opinion to the Attorney General--Save Our Everglades, 636 So. 2d 1336, 1339 (Fla. 1994); Fine v. Firestone, 448 So. 2d at 993; Tax Limitation, 644 So. 2d at 490. The purpose of the single-subject requirement, as recognized by this Court, is the prevention of proposals of compound amendments with separate portions that force voters to accept a disfavored component in order to vote for a desired component. See, e.g., Advisory Opinion

to the Attorney General--Marine Net Fishing, 620 So. 2d 997, 999 (Fla. 1993); Advisory Opinion to the Attorney General--Limited Political Terms in Certain Elective Offices, 592 So. 2d 225, 227 (Fla. 1991); Fine v. Firestone, 448 So. 2d 984, 988 (Fla. 1984).

As applied the single-subject test has been viewed functionally such that proposed amendments which "substantially alter or perform the functions of multiple branches of government" fail the test. Save Our Everslades, 636 So. 2d at 1340 (Fla. 1994); Advisory Opinion to Attorney General re Limited Casinos, 64 So. 2d 71, 73 (Fla. 1994).

Application of the foregoing principles to the Proposed Amendment manifestly establishes that the Fish and Wildlife Conservation Commission amendment passes the single-subject test. The complete text of the Proposed Amendment provides as follows:

#### Fish and Wildlife Conservation Commission

- (a) 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.
- (b) (i) There shall be a Fish and Wildlife Conservation Commission composed of seven (7) members appointed by the Governor subject to confirmation by the Senate for staggered terms of five (5) years.  
  
(2) Notwithstanding paragraph (b)(1), the initial members of the Commission shall be the members of the Game and Fresh Water Fish Commission and the Marine Fisheries Commission who are serving on either of those Commissions on the effective date of this amendment, who shall serve the remainder of their respective terms, and appointments to the Commission shall not be made unless and until all current terms of the members of the Game and Fresh

water Fish Commission and the Marine Fisheries Commission have expired so that only seven (7) members of the Commission remain and, in that event, the governor shall appoint members of the Commission as the terms of the remaining seven (7) members expire.

- (c) The Commission shall exercise the regulatory and executive powers of the state with respect to wild animal life, freshwater aquatic life, and marine aquatic life, except that all license fees for taking wild animal life, freshwater aquatic life and marine aquatic life, and penalties for violating regulations of the Commission shall be prescribed by specific statute. The Commission shall not be a sub-unit of any other state agency and shall have its own staff which includes management, research, enforcement, and public information functions. The Legislature may enact laws in aid of the Commission, not inconsistent with this section. The Commission's exercise of executive powers in the area of planning, budgeting, personnel management and purchasing shall be as provided by law. Revenue derived from such license fees shall be appropriated to the Commission by the Legislature for the purpose of management, protection and conservation of wild animal life, freshwater aquatic life and marine aquatic life.
- (d) If any portion of this section is held invalid for any reason, the remaining portion of this section, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and application.
- (e) This amendment shall take effect on the July 1 next occurring after the approval hereof by vote of the electors of the State of Florida.

The Proposed Amendment manifestly fulfills the single-subject requirement as it has a natural oneness of purpose in the unification, in one Commission, of the regulatory and executive powers of the state concerning freshwater aquatic life, marine aquatic life, and wild animal life by expanding the jurisdiction of the present Game and Fresh Water Fish Commission. Indeed close comparison of Article IX, Section 9, Fla. Const. with the

provisions of paragraph (c) of the Proposed Amendment discloses that the Proposed Amendment recreates the existing Game and Fresh Water Fish Commission with the same description of powers and limitations with the exception that the Proposed Amendment would expand the jurisdiction of the newly created Commission to include marine life in addition to freshwater aquatic life and require that the newly created Commission not be made a sub-unit of another state agency.

Details logically connected to the subject of the amendment which help define the implementation of the Proposed Amendment do not run afoul of the single-subject requirement. Advisory Opinion to the Attorney General re Limited Casinos, 644 So. 2d 71 (Fla. 1994); see also Floridians Against Casino Takeover, 363 So. 2d at 339; In re Advisory Opinion to the Attorney General--Homestead Valuation Limitation, 581 So. 2d 586, 588 (Fla. 1991). The provisions in paragraphs (a), (b), (d), and (e) concerning the purpose of the Commission, the appointment of the Commission members, the severability clause, and the effective date of the Proposed Amendment all provide details and elaboration that are logically connected to the singular purpose of the Proposed Amendment: the unification in one independent state agency of the regulatory and executive powers of the state with respect to aquatic and wild animal life.

The singularity of purpose of the Proposed Amendment confirms the complete absence of logrolling in the Initiative as it lacks separate components appealing to distinct constituencies. Thus the

Proposed Amendment poses no dilemma for voters wishing to approve only a portion of the Proposed Amendment. The Initiative is valid as it fully satisfies the single-subject requirement of Article XI, Section 3, Fla. Const.

**B. The Proposed Amendment Satisfies the Ballot Title and Summary Requirements of Section 101.161(1), Fla. Stat.**

The second issue before this Court is whether the Initiative satisfies the requirements of § 101.161(1), Fla. Stat. governing the content of the ballot title and summary, which statute provides in pertinent part:

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

The ballot title and summary must be accurate and informative so that the voter is not misled as to the chief purpose or the ramifications of the proposed amendment. Tax Limitation, 664 So. 2d at 490; Smith v. American Airlines, 606 So. 2d 618, 621 (Fla. 1992); Stop Early Release of Prisoners, 661 So. 2d at 1206. Additionally the language used must be objective and free from rhetoric. Save Our Everslades, 636 So. 2d at 1341.

The full text of the ballot title or caption is: **"Fish and Wildlife Conservation Commission: Unifies Marine Fisheries and Game and Fresh Water Fish Commissions."** The text of the ballot summary is as follows:

Summary: 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.

Plainly the ballot title and summary meet the word limits. The ballot title and summary are unambiguously clear and free of rhetoric in their statement of the chief purpose and effect of the Proposed Amendment and therefore satisfy the statutory requirements for placement on the ballot. Stop Early Release of Prisoners, 661 So. 2d at 1206.

#### CONCLUBION

The Proposed Amendment complies with the single-subject requirements 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.



REQUEST FOR LEAVE TO PRESENT ORAL ARGUMENT

Florida Wildlife Federation, Florida Audubon Society, Florida League of Anglers, Coastal Conservation Association-Florida, Fish and Wildlife Conservation Committee, and Sierra Club, Florida Chapter request leave to present, through their undersigned counsel, oral testimony before this Court concerning the validity of the Proposed Amendment.

RESPECTFULLY SUBMITTED this 16th day of September, 1997.



Richard L. Blaylock  
Florida Bar No. 0086878  
David G. Guest  
Florida Bar No. 0267228  
EarthJustice Legal Defense Fund  
Post Office Box 1329  
Tallahassee, FL 32302  
(850) 681-0031

Attorneys for Florida Wildlife  
Federation, Florida Audubon Society,  
Florida League of Anglers, Sierra Club,  
Florida Chapter, Coastal Conservation  
Association-Florida, and Fish and  
Wildlife Conservation Committee



Curt Kiser  
Florida Bar No. 123700  
Fish and Wildlife Conservation Committee  
315 S. Calhoun, Suite 600  
Tallahassee, FL 32301  
(850) 425-5632

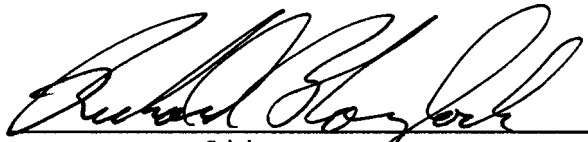
Attorney for Fish and Wildlife  
Conservation Committee

David Gluckman  
541 Old Magnolia Road  
Crawfordsville, FL 32327  
(850) 421-0152

Attorney for Florida League of Anglers

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 16th day of September, 1997 upon Robert A. Butterworth, Attorney General, State of Florida, The Capitol, Tallahassee, Florida 32399-1050.

  
Attorney

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