

Initiative, Everglades Trust Fund

Number: PETITION

Date: June 27, 1996

The Honorable Gerald Kogan
Chief Justice, and
Justices of The Supreme Court
of Florida
The Supreme Court Building
Tallahassee, Florida 32399-1925

Dear Chief Justice Kogan and Justices:

In accordance with the provisions of Article IV, section 10, Florida Constitution, and section 16.061, Florida Statutes, it is my responsibility to petition this Honorable Court for a written opinion as to the validity of an initiative petition circulated pursuant to Article XI, section 3, Florida Constitution.

On June 18, 1996, the Secretary of State, as required by section 15.21, Florida Statutes, submitted to this office an initiative petition seeking to amend the State Constitution to establish an Everglades Trust Fund. The full text of the proposed amendment states:

"(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 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.

(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."

The ballot title for the proposed amendment is "Everglades Trust Fund." The summary for the proposed amendment provides:

"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."

BALLOT TITLE AND SUMMARY

Section 16.061, Florida Statutes, requires the Attorney General to petition this Honorable Court for an advisory opinion as to whether the proposed ballot title and summary comply with section 101.161, Florida Statutes.

Section 101.161, Florida Statutes, prescribes the requirements for the ballot title and summary of a proposed constitutional amendment, stating in pertinent part:

"Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot The 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."

This Court has stated "that the ballot [must] be fair and advise the voter sufficiently to enable him intelligently to cast his ballot." *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982), *quoting*, *Hill v. Milander*, 72 So. 2d 796, 798 (Fla. 1954).

The ballot title and summary of the "Everglades Trust Fund" amendment advises the voter as to the text of the amendment and the chief purpose of the measure. As this Court has pointed out, a ballot summary is not required to explain every detail or ramification of the proposed amendment. *Advisory Opinion to the Attorney General--Limited Political Terms in Certain Elective Offices*, 592 So. 2d 225, 228 (Fla. 1991), and recently reiterated in *Advisory Opinion to the Attorney General--Tax Limitation*, Case No. 86,600 (Fla. May 9, 1996). Here the ballot title and summary describe the trust, its purpose and the method by which it will be funded. Thus, the ballot title and summary appear to satisfy the requirements of section 101.161, Florida Statutes.

Therefore, I respectfully request this Honorable Court's opinion as to whether the ballot title and substance of the constitutional amendment, proposed by initiative petition, complies with section 101.161, Florida Statutes.

SINGLE SUBJECT LIMITATION

Section 16.061, Florida Statutes, requires the Attorney General, within 30 days after receipt of the proposed amendment to the Florida Constitution by citizens' initiative, to petition this Honorable Court for an advisory opinion as to whether the text of the proposed amendment complies with Article XI, section 3, Florida Constitution.

Article XI, section 3, Florida Constitution, reserves to the people the power to propose the revision or amendment of any portion of the Constitution by initiative. It requires, however, that any such revision or amendment "embrace but one subject and matter directly connected therewith." The single-subject requirement is a rule of restraint "designed to insulate Florida's organic law from precipitous and cataclysmic change." *Advisory Opinion to the Attorney General--Save Our Everglades*, 636 So. 2d 1336, 1339 (Fla. 1994). The single-subject limitation also protects the integrity of the constitution from the evil of "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." *Id.*

An amendment proposed by initiative satisfies the single subject requirement if it has "a logical and natural oneness of purpose[.]" *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984). "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." *Advisory Opinion to the Attorney General--Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1020 (Fla. 1994).

This Court in *Advisory Opinion to the Attorney General--Save Our Everglades*, *supra*, concluded that the creation of a trust fund for the restoration of the Everglades and the provision for funding and operation of the trust accomplished what were primarily legislative functions. The Court found that the initiative also contemplated the exercise of vast executive powers by authorizing a board of trustees to "administer" the trust, expending funds to "restore water quantity and quality to levels that existed at some earlier, unspecified, historical" date." 636 So. 2d at 1340.

Subsequently in *Advisory Opinion to the Attorney General--Funding for Criminal Justice*, 639 So. 2d 972, 973-974 (Fla. 1994), this Court concluded that the Criminal Justice Trust Fund initiative met the single-subject requirement:

"The amendment affects only the legislative branch of Florida's government. While the initiative creates a trust fund, the funding of the trust and allocation of monies therein remains with the legislature. The legislature's discretion in allocating the funds is limited only by the provision that the funds must be used for criminal justice purposes and may not replace or substitute for funding at a level less than that allocated to the criminal justice system in the 1993-1994 fiscal year. Further, the amendment does not augment or detract from any of the legislative powers enumerated in the constitution."

The Everglades Trust Fund initiative now under consideration by this Court creates the Everglades Trust Fund and limits the expenditure of funds for the purposes of conservation and protection of natural resources. The proposal provides, however, that the Fund is administered by a special district, the South Florida Water Management District or its successor agency. While the earlier initiative creating a trust fund considered by this Court in *Advisory Opinion to the Attorney General--Save Our Everglades*, *supra*, granted the board of trustees broad discretion in

administering the trust fund, the initiative petition currently under consideration requires that the administration of the fund be consistent with statutory law. Thus, the proposed amendment does not grant the broad executive powers authorized under the previously stricken petition but rather requires that such powers be exercised as legislatively prescribed. It would not, therefore, appear to raise the same concerns as the earlier proposed amendment.

Therefore, I respectfully request this Honorable Court's opinion as to whether the constitutional amendment, proposed by initiative petition, complies with Article XI, section 3, Florida Constitution.

Respectfully submitted,

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RAB/tgk

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