

Initiative, Sugar Production fee

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.

The Court has now received three interrelated initiative petitions after having reviewed and rejected an earlier petition in 1994. That petition sought to amend the Florida Constitution by creating a trust to restore the Everglades funded by a fee on raw sugar. As described in the summary for that petition, it would have

"Create[d] the Save Our Everglades Trust to restore the Everglades for future generations. Directs the sugarcane industry, which polluted the Everglades, to help pay to clean up pollution and restore clean water supply. Funds the Trust for twenty-five years with a fee on raw sugar from sugarcane grown in the Everglades Ecosystem of one cent per pound, indexed for inflation. Florida citizens trustees will control the Trust."

The Court in *Advisory Opinion to the Attorney General--Save Our Everglades*, 636 So. 2d 1336, 1341 (Fla. 1994), concluded that the 1994 petition violated both the single subject requirement and the ballot title and summary requirements specified in section 101.161, Florida Statutes. The drafters now present three separate petitions seeking to avoid the problems encountered in the 1994 petition.

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 levy an Everglades Sugar Fee. The full text of the proposed amendment states:

"(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 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 the 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 ballot title for the proposed amendment is "Fee on Everglades Sugar Production." The summary for the proposed amendment is:

"Provides that the South Florida Water Management District shall levy an Everglades Sugar Fee of 1 [cent] 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."

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 relevant part:

"Whenever a constitutional amendment . . . is submitted to the vote of the people, the substance of such amendment . . . shall be printed in clear and unambiguous language on the ballot The substance of the amendment . . . 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 interpreted this statutory provision to mean that "the ballot title and summary . . . state in clear and unambiguous language the chief purpose of the amendment." *Advisory Opinion to the Attorney General--Save Our Everglades*, 636 So. 2d 1336, 1341 (Fla. 1994), quoting, *Askew v. Firestone*, 421 So. 2d 151, 154-155 (Fla. 1982). The ballot title and summary 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 "Fee on Everglades Sugar Production" amendment states the chief purpose of the measure --to impose a fee on sugar production in the Everglades to be used for the purposes of conservation and protection of natural resources and the abatement of water pollution within the Everglades. As this Court stated in *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), the summary is not required to explain every detail or ramification of the proposed amendment. It would appear, therefore, that the ballot title and summary adequately informs the voter of the chief purpose of the amendment.

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, comply 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." *Evans v. Firestone*, 457 So. 2d 1351, 1352 (Fla. 1984).

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

This Court in *Advisory Opinion to the Attorney General--Save Our Everglades*, *supra*, concluded that the imposition of a fee on sugar production constituted the performance of a legislative function. The Court found that the initiative also contemplated the exercise of "vast" executive powers, including the building and operation of stormwater treatment areas and other facilities with state funds.

The present initiative, while authorizing the imposition of a fee on sugar production in the Everglades, limits the use of the fund for conservation and protection of the natural resources and abatement of water pollution within the Everglades, and requires that the fund be administered by a special district consistent with statutory law. 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, 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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