

**IN THE SUPREME COURT OF FLORIDA**

Case Nos.: SC13-659, SC13-965

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ADVISORY OPINION TO THE ATTORNEY GENERAL  
RE: WATER AND LAND CONSERVATION –  
DEDICATES FUNDS TO ACQUIRE AND  
RESTORE FLORIDA CONSERVATION AND  
RECREATION LANDS

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**INITIAL BRIEF OF SPONSOR**  
**Florida's Water and Land Legacy, Inc.**

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## **STATEMENT OF THE CASE**

This matter comes before the Court upon a petition for an advisory opinion submitted by the Attorney General on April 18, 2013 in accordance with the provisions of Article IV, Section 10, Florida Constitution, and Section 16.061, Florida Statutes. The question before this Court is whether the text of the proposed amendment entitled “Land and Water Conservation - Dedicates funds to acquire and restore Florida conservation and recreation lands” (hereinafter “Conservation Amendment”), complies with Article XI, Section 3, Florida Constitution, and whether the proposed ballot title and substance comply with Section 101.161, Florida Statutes. This Court has jurisdiction pursuant to Article V, Section 3(b)(10), Florida Constitution. This brief is submitted by Florida’s Water and Land Legacy, Inc., the Sponsor of the proposed amendment, in response to this Court's Order accepting jurisdiction and inviting interested parties to submit briefs.

The Sponsor has filed with the Secretary of State a proposed initiative petition which would amend the Florida Constitution by adding a new Section 28 to Article X:

SECTION 28. Land Acquisition Trust Fund.--

a) Effective on July 1 of the year following passage of this amendment by the voters, and for a period of 20 years after that effective date, the Land Acquisition Trust Fund shall receive no less than 33 percent of net revenues derived from the existing excise tax on documents, as defined in the statutes in effect on



January 1, 2012, as amended from time to time, or any successor or replacement tax, after the Department of Revenue first deducts a service charge to pay the costs of the collection and enforcement of the excise tax on documents.

b) Funds in the Land Acquisition Trust Fund shall be expended only for the following purposes:

1) As provided by law, to finance or refinance: the acquisition and improvement of land, water areas, and related property interests, including conservation easements, and resources for conservation lands including wetlands, forests, and fish and wildlife habitat; wildlife management areas; lands that protect water resources and drinking water sources, including lands protecting the water quality and quantity of rivers, lakes, streams, springsheds, and lands providing recharge for groundwater and aquifer systems; lands in the Everglades Agricultural Area and the Everglades Protection Area, as defined in Article II, Section 7(b); beaches and shores; outdoor recreation lands, including recreational trails, parks, and urban open space; rural landscapes; working farms and ranches; historic or geologic sites; together with management, restoration of natural systems, and the enhancement of public access or recreational enjoyment of conservation lands.

2) To pay the debt service on bonds issued pursuant to Article VII, Section 11(e).

c) The moneys deposited into the Land Acquisition Trust Fund, as defined by the statutes in effect on January 1, 2012, shall not be or become commingled with the General Revenue Fund of the state.

The proposed Conservation Amendment includes the following title and summary as required by Section 101.161(1), Florida Statutes:

**BALLOT TITLE:** Water and Land Conservation - Dedicates funds to acquire and restore Florida conservation and recreation lands

**BALLOT SUMMARY:** Funds the Land Acquisition Trust Fund to acquire, restore, improve, and manage conservation lands including wetlands and forests; fish and wildlife habitat; lands

protecting water resources and drinking water sources, including the Everglades, and the water quality of rivers, lakes, and streams; beaches and shores; outdoor recreational lands; working farms and ranches; and historic or geologic sites, by dedicating 33 percent of net revenues from the existing excise tax on documents for 20 years.

As set forth in the Attorney General's petition, the Secretary of State has determined there are 69,562 valid petition signatures validated to the Division of Elections which constitute 10 percent of the required signatures. The Secretary of State so advised the Attorney General pursuant to Section 15.21, Florida Statutes. The Financial Impact Estimating Conference was then convened pursuant to Article XI, Section 5(c), Florida Constitution, and Section 100.371, Florida Statutes.

The Financial Impact Estimating Conference met for four days between May 7-22, 2013, and approved a "Complete Financial Information Statement" and a "Financial Impact Statement" as required by law. The Conference approved the following Financial Impact Statement to be placed on the ballot alongside the title and summary of the amendment:

#### FINANCIAL IMPACT STATEMENT

This amendment does not increase or decrease state revenues. The state revenue restricted to the purposes specified in the amendment is estimated to be \$648 million in Fiscal Year 2015-16 and grows to \$1.268 billion by the twentieth year. Whether this results in any additional state expenditures depends upon future legislative actions and cannot be determined. Similarly, the impact on local government

revenues, if any, cannot be determined. No additional local government costs are expected.

On June 3, 2013, this Court entered an order granting the Sponsor's motion to expedite the case. On that same date, this Court entered an order inviting all interested parties to file briefs. On June 5, 2013, the Attorney General petitioned this Court to consider whether the Financial Impact Statement is in accord with Section 100.371, Florida Statutes, and this Court issued an order on June 7, 2013 consolidating the two advisory opinions for briefing purposes.

Florida's Water and Land Legacy, Inc., as Sponsor of the proposed Conservation Amendment, submits this Initial Brief as an interested party.

### **SUMMARY OF THE ARGUMENT**

The proposed Conservation Amendment complies with the single subject requirements of Article XI, Section 3 because it presents one clear single subject to Florida voters: Shall a portion of documentary stamp tax revenues be dedicated to pay for natural resources conservation? The Conservation Amendment complies with the single subject requirements because it builds on existing constitutional provisions and policy in a narrow and limited way – by providing a dedicated source of funding for a trust

fund already defined in Florida's Constitution, consistent with a purpose of land and water conservation historically expressed in Florida's Constitution.

This Court's single subject test requires that a proposed amendment does not substantially affect multiple functions of government. The amendment dedicates 33 percent of the proceeds from the existing documentary stamp tax for the Land Acquisition Trust Fund to support a broad range of conservation purposes. This type of dedication is consistent with this Court's finding of compliance in the Tobacco Education initiative. *See Advisory Opinion to the Att'y Gen'l re Protect People, Especially Youth, From Addiction, Disease, and Other Health Hazards of Using Tobacco*, 926 So. 2d 1186 (Fla. 2006).

The text of the Amendment is drafted to avoid the violations of previous proposals that had a substantial effect on multiple functions of government. In fact, the Conservation Amendment does not *substantially* affect any function of government. It does not create a new tax. It does not restrict or diminish the Legislature's discretion to set levels of taxation. It does not mandate an appropriation or expenditure in any amount or percentage. Instead, it defines allowable purposes for appropriations from a trust fund for conservation purposes. The Legislature retains complete discretion over the threshold decision of how to appropriate the 33 percent

of the proceeds of the documentary stamp tax dedicated to the Land Acquisition Trust Fund. The Legislature has complete discretion as to the allocation among the broad conservation purposes defined in the Conservation Amendment. The Amendment simply specifies a dedicated funding source for the Land Acquisition Trust Fund.

While the proposed Conservation Amendment does therefore have an impact on the legislative function of state government, this impact is limited and hardly substantial. Further, there are no substantial effects on other branches of state government. There is no impact on the Governor's authority to veto any appropriations made by the Legislature. There is no substantial impact on other provisions of the Constitution. In fact, the proposed amendment fosters the policy of existing environmental provisions of the Constitution. Rather than representing a radical departure or change in state policy, it is completely consistent with existing constitutional provisions. For example, Article II, Section 7(a), Florida Constitution, states “(i)t shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the ... conservation and protection of natural resources.” Clearly, the Conservation Amendment is intended to support adequate provision for the conservation of natural resources.

The ballot title and summary comply with statutory mandates of Section 101.161, Florida Statutes. The ballot title and summary use clear and unambiguous language to inform voters of the chief purpose of the proposed amendment – providing a dedicated source of funds for the Land Acquisition Trust Fund for land and water conservation. The conservation purposes are explicitly identified. No advocacy language is used. The ballot title and summary do not use any emotional language, sloganeering, or political rhetoric.

Likewise, the Financial Impact Statement prepared by the Financial Impact Estimating Conference presents a clear and unambiguous statement as to the estimated increase or decrease in any revenues or costs to State or local governments resulting from the proposed initiative as required by Section 100.371, Florida Statutes.

In sum, the Conservation Amendment provides a clear and direct question to Florida voters that complies with both the single subject requirement and the requirement of clarity in ballot title and summary. Accordingly, this Court should allow the Conservation Amendment to be placed on the ballot.

## ARGUMENT

- I. THE CONSERVATION AMENDMENT COMPLIES WITH THE SINGLE SUBJECT RULE BECAUSE IT PRESENTS A LIMITED AND UNIFIED QUESTION, DOES NOT SUBSTANTIALLY IMPACT MORE THAN ONE FUNCTION OF GOVERNMENT, AND IS CONSISTENT WITH EXISTING CONSTITUTIONAL POLICIES PROTECTING FLORIDA'S LAND AND WATER RESOURCES.

Article XI, Section 3, Florida Constitution, reserves to the people the power to propose amendments or revisions to their Constitution.<sup>1</sup> However, the single subject requirement contained in that provision prevents citizen initiatives from making changes to the Constitution that could have a substantial effect on multiple functions of state government, or involve multiple precipitous changes in the law. The Conservation Amendment has no substantial impact on the functions of government. It does not precipitously change Florida law. Rather, in a narrow way, the Conservation Amendment advances policies historically expressed in the Florida Constitution to protect Florida's natural resources.

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<sup>1</sup> Article XI, Section 3, Florida Constitution provides:  
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, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith.

As this Court has noted, when considering whether an initiative proposal complies with the Single Subject requirement of Article XI, Section 3, as well as when considering the compliance of the ballot title and summary with the requirements of Section 101.161, Florida Statutes, an amendment will only be invalidated when “the proposal is clearly and conclusively defective on either ground.” *Advisory Opinion to the Att’y Gen’l re Protect People, Especially Youth, From Addiction, Disease, and Other Health Hazards of Using Tobacco*, 926 So. 2d 1186, 1190 (Fla. 2006) (quoting *Advisory Opinion to the Att’y Gen’l re Amendment to Bar Government from Treating People Differently Based on Race in Public Education*, 778 So. 2d 888, 890-91 (Fla. 2000)). Because the Conservation Amendment is not clearly and conclusively defective, but rather presents a unified question consistent with existing constitutional policy, this Court should uphold the proposal and allow it to appear on the ballot.

**A. The Conservation Amendment complies with the single subject rule because it manifests a logical oneness of purpose as a component part of a single dominant plan or scheme within the existing constitutional framework of natural resource protection.**

The Conservation Amendment is designed within the existing framework of natural resource protection in the Florida Constitution. It simply does one new thing in that it dedicates a portion of an existing



revenue source, historically used for natural resources conservation, to a constitutionally authorized trust fund for purposes currently authorized in the constitution and by law.

This Court has repeatedly explained the standard of review for the single subject rule. In *Advisory Opinion to the Attorney General Re: Florida Marriage Protection Amendment*, this Court stated, “A proposed amendment must manifest ‘a logical and natural oneness of purpose’ to accomplish the purpose of Article XI, Section 3.” 926 So. 2d 1229, 1233 (Fla. 2006) (quoting *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984)). This Court has also noted that, in determining compliance with the single subject rule “this Court must evaluate whether the proposal ‘may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme.’” *Advisory Opinion to the Att’y Gen’l re Standards for Establishing Legis. Dist. Boundaries*, 2 So. 3d 175, 181 (Fla. 2009) (quoting *Advisory Opinion to the Att’y Gen’l re Patient’s Right to Know About Adverse Med. Incidents*, 880 So. 2d 617, 620 (Fla. 2004)); *see also Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984) (“Unity of object and plan is the universal test.”). To that end “how an initiative proposal affects other articles or sections of the constitution is an appropriate factor to be

considered in determining whether there is more than one subject included in the initiative proposal.” *Fine*, 448 So. 2d at 990.

The funding mechanism for land and water conservation has been part of the Florida Constitution for fifty years. In 1963, voters ratified Article IX, Section 17, Florida Constitution of 1885, which authorized “the issuance of revenue bonds for the purpose of acquiring lands, water areas and related resources in furtherance of outdoor recreation, natural resources conservation and related facilities.” That amendment also created the Land Acquisition Trust Fund to collect revenues and make bond payments. Since 1967, the Land Acquisition Trust Fund has been funded through the documentary stamp tax. Chapter 67-320, Laws of Florida, authorized a “documentary sur tax” to be paid into the Land Acquisition Trust for trust fund purposes.

In 1968, voters ratified a new Constitution, including in Article II special protection for the State’s natural resources and scenic beauty. This section was amended by initiative in 1996, and again in 1998 by a proposal from the Constitution Revision Commission to require, “Adequate provision shall be made by law ... for the conservation and protection of natural resources” as well as for water pollution abatement in the Everglades. *See* art. II, § 7, Fla. Const.

In 1972, voters ratified an amendment to carry forward the bond authorization from the 1885 Constitution into the 1968 Constitution with the approval of Article XII, Section 9(a)(1), Florida Constitution, and also approved another conservation bond issue. Pursuant to this authority, the Legislature approved the Land Conservation Act of 1972 (Ch. 72-300, Laws of Fla.) and Florida Preservation 2000 Act (Ch. 90-217, Laws of Fla.), the latter of which used the documentary stamp tax to fund land conservation through the Land Acquisition Trust Fund.

The 1997-98 Constitution Revision Commission proposed several amendments relating to land and water conservation which were ratified in 1998. Revision 1 contained four related provisions including Article VII, Section 11(e), Florida Constitution, to authorize financing “the acquisition and improvement of land, water areas, and related property interests and resources for the purposes of conservation, outdoor recreation, water resource development, restoration of natural systems, and historic preservation.” Revision 4 contained a wholesale change of the executive article including Article IV, Section 4(e), Florida Constitution, to empower the governor, chief financial officer, attorney general, and commissioner of agriculture to sit as the “land acquisition trust fund.” Pursuant to that authority, the Legislature subsequently enacted the Florida Forever Act (Ch

99-247, Laws of Fla.) and the Everglades Restoration Investment Act (Ch 2000-129, Laws of Fla.). Both are funded through bond proceeds secured through the documentary stamp tax. *See* § 201.15, Fla. Stat.; *cf.* Financial Impact Estimating Conference, Complete Initiative Financial Information Statement, *available online at:*

<http://www.edr.state.fl.us/Content/constitutional-amendments/2014Ballot/LandAcquisitionTrustFund33percentDocStamp/LATF33percentFinancialInformationStatement.cfm>.

The proposed Conservation Amendment has this requisite oneness of purpose in that it dedicates a portion of an existing tax, historically tied to implementation of land and water conservation measures authorized by the constitution, to the land acquisition trust fund for conservation purposes. The amendment has unity of purpose and natural relation and connection as component parts as a natural extension of existing constitutional authority for land and water conservation.

**B. The Conservation Amendment does not substantially alter or perform the functions of multiple branches of government but rather extends existing constitutional policies of protecting Florida's natural resources.**

The Conservation Amendment does not substantially alter or perform the function of multiple branches of government. The Amendment continues and provides a dedicated source of funding for the Land Acquisition Trust Fund, a trust fund which is already provided for in the

Florida Constitution. *See* art IV, § 9, Fla. Const. The scope and purposes of the Land Acquisition Trust Fund are defined in statute. *See* § 375.041, Fla. Stat. The oversight of the Land Acquisition Trust Fund continues to be performed by the Governor and Cabinet, as provided for in the Florida Constitution. *See* art IV, § 9, Fla. Const.

The Conservation Amendment defines the purpose of the Land Acquisition Trust Fund to fund the “acquisition and improvement of land, water areas, and related property interests, including conservation easements, and resources for conservation lands ... together with management, restoration of natural systems, and the enhancement of public access and recreational enjoyment of conservation lands.” This purpose is consistent with Article II, Section 7(a) of the Florida Constitution, which provides general State policy regarding the conservation of natural resources, and is also consistent with Article XII, Section 9(a)(1), Florida Constitution (incorporating by reference Article IX, Section 17, Florida Constitution of 1885). This purpose is also consistent with Article VII, Section 11(e) of the Florida Constitution, which provides that the State may issue bonds to finance the acquisition and improvement of land and water areas “for the purposes of conservation, outdoor recreation, water resource development, restoration of natural systems, and historic preservation.”

The Conservation Amendment continues a trust fund which already exists in the Florida Constitution and under state law, and defines it in a manner consistent with existing state law. The Conservation Amendment does not create a new trust fund, nor does it provide for a new governance structure for the trust fund. In *Advisory Opinion to the Att’y Gen’l re Protect People, Especially Youth, From Addiction, Disease, and Other Health Hazards of Using Tobacco*, this Court upheld an initiative which both created a tobacco education program and required the Legislature annually to appropriate a fixed percentage of the State’s annual Tobacco Settlement proceeds. 926 So. 2d 1186, 1193 (Fla. 2006). The Court found that the proposal did not require the Legislature to appropriate a fixed percentage of the State budget for the program, and furthermore designated funds “for a use mandated by the settlement agreement itself.” *Id.* The Court found that the Tobacco Education amendment had “one chief purpose, which is to use a portion of the Tobacco Settlement money to create a tobacco education and prevention program especially directed toward youth. The mechanism for achieving this purpose does not substantially alter or perform the functions of either the legislative or executive branch.” *Id.*

Likewise, the Conservation Amendment is much narrower in scope than the Save Our Everglades amendment that was rejected by the Court.

*See In re Advisory Opinion to the Att’y Gen’l – Save Our Everglades*, 636 So.2d 1336 (Fla. 1994). The failed Save Our Everglades amendment sought to do several things at once. It established a new trust fund for the restoration of the Everglades; it provided for the appointment of Trustees to administer the trust fund; it found that the sugar cane industry polluted the Everglades; and it imposed a fee on the sugar cane industry to fund the trust fund and cover clean-up costs. *Id.* at 1340. The Court recognized that the Save Our Everglades amendment sought to perform essentially every function of government. *Id.* It performed a legislative function in making a new public policy decision of statewide significance. *Id.* It performed an executive function by creating Trustees, appointed by the Governor, who would exercise “vast executive powers” in managing and overseeing the trust fund. *Id.* And, in imposing a fee on the sugar cane industry, the Save Our Everglades initiative rendered “a judgment of wrongdoing and de facto liability,” thus performing a “quintessential judicial function.” *Id.* Not only did the amendment affect each and every branch of government, it did so in a way that was inconsistent with then-existing state law. *Id.*

The Conservation Amendment, by contrast, is very narrow in its effect. It makes the Land Acquisition Trust Fund permanent, and provides additional definition for the purpose of the Land Acquisition Trust Fund in a

manner consistent with other sections of the constitution that embrace the public policy of protecting Florida's natural resources. The Conservation Amendment does not attempt to change the governance structure of the Land Acquisition Trust Fund, which is already provided for under the Constitution. The Conservation Amendment does not attempt to make judicial determinations by imposing fines or penalties on one industry in order to provide for funding for land and water conservation. The Conservation Amendment does not impact the day-to-day administration of the Land Acquisition Trust Fund, which is currently vested by law in the Department of Environmental Protection.

As this Court has recently explained, “the fact that [a] branch of government is required to comply with a provision of the Florida Constitution does not necessarily constitute the usurpation of the branch’s function within the meaning of the single subject rule.” *See Advisory Opinion to the Att’y Gen’l re Standards for Establishing Legis. Dist. Boundaries*, 2 So. 3d 175, 181 (Fla. 2009) (quoting *Protect People, Especially Youth, From Addiction, Disease, and Other Health Hazards of Using Tobacco*, 926 So. 2d at 1192). Similarly, an initiative will not be removed just because there is some “possibility that an amendment might



interact with other parts of the Florida Constitution.” *See Advisory Opinion to the Att’y Gen’l re Term Limits Pledge*, 718 So. 2d 798, 802 (Fla. 1998).

The Conservation Amendment also does not impact the authority of the Governor to veto appropriations. There is no requirement in the proposed amendment for a specific amount or percentage expenditure of the overall State budget or specific appropriation by the Legislature. In this way, the Conservation Amendment is distinguishable from prior amendments that mandated a certain percentage of the budget be expended or appropriated, and did impact the Governor's veto function. *See, e.g., Advisory Opinion to the Att’y Gen’l Re Requirement for Adequate Public Education Funding*, 703 So. 2d 446, 449 (Fla. 1997) (finding that the Governor's veto function would be limited “because the Governor would be unable to veto any specific appropriation within the forty-percent education appropriation if the veto would reduce the education appropriation to less than the required forty percent.”). With the Conservation Amendment, by contrast, if the Legislature chooses to appropriate dedicated funds in the Land Acquisition Trust Fund, then the Governor retains the authority to veto that appropriation.<sup>2</sup>

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<sup>2</sup> In fact, this Court has found that even amendments which did place certain restrictions on gubernatorial vetoes for funds to implement the amendment do not “substantially alter” the veto power. *See Protect People*,

The Conservation Amendment builds upon the previously established constitutional entity of the Land Acquisition Trust Fund. The Conservation Amendment is careful to not try to accomplish too much. It does not suffer from the same flaws that were present in the Save our Everglades Trust Fund. It does not alter or perform the functions of multiple branches of government.

**C. The Conservation Amendment has only minimal impact on the legislative branch because the Legislature retains complete discretion on whether to appropriate the funds in the Land Acquisition Trust Fund, and broad discretion on how to appropriate the funds.**

The only branch of government the Conservation Amendment does impact is the legislative branch, but that impact is not substantial. The Legislature retains complete discretion as to how to appropriate those funds dedicated to the Land Acquisition Trust Fund. Essentially, the Legislature can appropriate those funds for any program that furthers the very broad purposes defined in the Conservation Amendment.

By allowing the Legislature to retain its discretion in this matter, the Conservation Amendment is consistent with previous initiatives that have been upheld by this Court. For instance, the Court upheld the Voluntary

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*Especially Youth, From Addiction, Disease, and Other Health Hazards of Using Tobacco*, 926 So. 2d at 1193 (citing *Advisory Opinion to the Att'y Gen'l re: Fla. Transportation Initiative for Statewide Highspeed Monorail, Fixed Guideway or Magnetic Levitation Sys.*, 769 So.2d 367, 371 (Fla. 2000)).

Pre-Kindergarten amendment because “the proposal does not require the Legislature to spend a specific percentage of the budget or a specific amount on the development of the pre-kindergarten program.” *Advisory Opinion to the Att’y Gen’l re Voluntary Universal Pre-Kindergarten Educ.*, 824 So. 2d 161, 163 (Fla. 2002) (noting that the amendment does not actually perform the appropriation function of the Legislature). Similarly, the Court upheld the High Speed Rail initiative, which required funding for the development of a high speed rail system, but did “not require the Legislature to spend a specific percentage of the budget or even a specific amount on the development of this system.” *Advisory Opinion to the Att’y Gen’l re: Fla. Transportation Initiative for Statewide Highspeed Monorail, Fixed Guideway or Magnetic Levitation Sys.*, 769 So. 2d 367, 368 (Fla. 2000).

The Conservation Amendment provides broad purposes for the dedicated funds in the Land Acquisition Trust Fund, but does not require the Legislature actually to appropriate any funds.

The Conservation Amendment is therefore consistent with previous initiatives which have been approved by the Court. It is also distinguishable from prior proposed initiatives which mandated significant appropriations by the Legislature, and were found to have violated the single subject rule. *See Requirement for Adequate Public Education Funding*, 703 So. n2d 446 (Fla.

1997) (rejecting an amendment which would have allocated at least 40 percent of state revenues for education). That initiative, by requiring the Legislature to spend a minimum percentage of 40 percent for public education, substantially altered the Legislature’s discretion “in making value choices as to appropriations among the various vital functions of State government, including not only education, but also civil and criminal justice; public health, safety, and welfare; transportation; disaster relief; agricultural and environmental regulation; and the remaining array of State governmental services.” *Id.* at 449.

The Conservation Amendment preserves the Legislature’s broad discretion in making appropriations consistent with its defined purposes. The Legislature's Office of Economic and Demographic Research estimates that the amount of state funds dedicated to the Land Acquisition Trust Fund will be \$648 million in Fiscal Year 2015-16. *See Financial Impact Estimating Conference, Financial Impact Statement.* This is less than one percent of the state budget. Moreover, the Financial Impact Statement recognizes that “whether the amendment results in any additional state expenditures depends upon further legislative actions and cannot be determined.” *Id.* at 1. **The scope of the amendment's specified purposes “is subject to legislative interpretation.”** *Id.* at 7.

Documentary stamp tax revenues traditionally have funded a variety of environmental programs through trust funds. *Id.* The Conservation Amendment does not prevent the Legislature from transferring many of those programs currently funded from other sources to the Land Acquisition Trust Fund. *Id.* Therefore, under the proposed Conservation Amendment, the Legislature may choose to fund environmental programs from the Land Acquisition Trust Fund rather than from other sources, “resulting in little or no increase in overall funding for the projects authorized by the amendment.” *Id.* That conclusion further shows the potential breadth of discretion the Legislature could exercise under the Conservation Amendment and its minimal impact on the legislative functions.

While the Conservation Amendment does therefore impact the Legislative branch, this impact is not substantial. The Conservation Amendment’s designation of 33 percent of funds from the documentary stamp tax represents less than one percent of the overall State budget. The Legislature retains broad discretion in how to appropriate those funds.

The Conservation Amendment has minimal if any impact on the Legislature’s taxation function. It does not itself impose a new fee or tax. It does not make any adjustments to the current documentary stamp tax, nor does it limit the Legislature's ability to do so in the future. This Court has

approved proposals that had much more substantial impacts on State revenues than the Conservation Amendment. *See, e.g., Statewide Highspeed Monorail*, 769 So. 2d at 370-71 (“branches of government left with broad discretion in determining the details and funding of the project”); *Advisory Opinion to the Att’y Gen’l re Florida’s Amendment to Reduce Class Size*, 816 So. 2d 580, 584 (Fla. 2002) (amendment did not itself specify a percentage of the budget or a specific amount to be spent); *Voluntary Universal Pre-Kindergarten Educ.*, 824 So. 2d at 165 (approving limited effect even where amendment required expenditure of additional funds from existing programs). In this way, the Conservation Amendment has less impact than previous successful amendments approved by this Court which did levy a new fee or tax for a specific purpose. *See, e.g., Advisory Opinion to Att’y Gen’l – Fee on Everglades Sugar Production*, 681 So. 2d 1124, 1126 (Fla. 1996) (approving an amendment that creates a one penny per pound fee on sugar produced in the Everglades Agricultural Area, and uses these revenues for Everglades restoration).

Unlike other initiative proposals approved by this Court, the Conservation Amendment does not create a new tax, or compel the continuation of a tax. It does designate revenues from an existing tax. The Conservation Amendment therefore does impact the Legislature. However,

by respecting the Legislature's complete discretion to modify in any way the documentary stamp tax, the Conservation Amendment does not substantially impact the legislative function of state government. There are likewise no unforeseen, substantial collateral impacts on any level of Florida government. Therefore this Court should hold that the Conservation Amendment complies with the single subject requirement of Article XI, Section 3.

II. THE CONSERVATION AMENDMENT'S BALLOT TITLE AND SUMMARY CLEARLY INFORM VOTERS OF THE PURPOSE OF THE AMENDMENT, AND ARE NOT MISLEADING OR CONFUSING.

This Court's analysis of the ballot title and summary requirements focuses on two questions: (1) whether the title and summary clearly and accurately inform the voter of the chief purpose of the amendment; and (2) whether the language of the title and summary, as written, is likely to mislead the public.<sup>3</sup> *See, e.g., Florida Marriage Protection Amend.*, 926 So.

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<sup>3</sup> The statutory requirements for ballot title and summary for proposed initiatives are:

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 . . . Except for amendments and ballot language proposed by joint resolution, 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

2d at 1236; *but see Advisory Opinion to the Att’y Gen’l Re Protect People from the Hazards of Second-Hand Smoke by Prohibiting Workplace Smoking*, 814 So. 2d 415, 419 (Fla. 2002) (because of the statutory 75-word limit, the summary and title cannot necessarily detail every aspect of a proposed initiative). The title and summary for the proposed Conservation Amendment accomplish the fundamental purpose of explaining the “true meaning and ramifications” of the amendment. *Advisory Opinion to the Att’y Gen’l re Tax Limitation*, 644 So. 2d 486, 490 (Fla. 1994).

The ballot title and summary for the proposed Conservation Amendment clearly inform voters of the chief purpose of the proposal. The ballot title for the proposed amendment reads: “*Water and Land Conservation – Dedicates funds to acquire and restore Florida conservation and recreation lands.*” The ballot summary reads:

Funds the Land Acquisition Trust Fund to acquire, restore, improve, and manage conservation lands including wetlands and forests; fish and wildlife habitat; lands protecting water resources and drinking water sources, including the Everglades, and the water quality of rivers, lakes, and streams; beaches and shores; outdoor recreational lands; working farms and ranches; and historic or geologic sites, by dedicating 33 percent of net revenues from the existing excise tax on documents for 20 years.

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consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.  
§ 101.161, Fla. Stat.



The title and summary are written in clear and unambiguous language so that “the voter will have notice of the issue contained in the amendment, will not be misled as to its purpose, and can cast an intelligent and informed ballot.” *Florida Marriage Protection Amendment*, 926 So. 2d 1236 (citing *Save Our Everglades*, 636 So. 2d at 1341).

The title and summary for the Conservation Amendment tell voters the chief purpose of the amendment – to fund the Land Acquisition Trust Fund for land and water conservation purposes, which are then summarized in a clear and straightforward manner. The voter is informed of the source of the funds - 33 percent of the documentary stamp tax – and that this dedicated source of funding shall last 20 years. There is nothing either expressed or implicit in the amendment that would mislead a voter. The title and summary do not include emotional language or political rhetoric. *Cf. Advisory Opinion to the Att’y Gen’l re Additional Homestead Tax Exemption*, 880 So. 2d 646, 653 (Fla. 2004) (citing *Save Our Everglades*, 636 So. 2d at 1341-42). The ballot title and summary for the proposed Conservation Amendment “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)).

Accordingly, this Court should hold that the title and summary comply with the requirements of Section 101.161, Florida Statutes.

III. THE FINANCIAL IMPACT STATEMENT FOR THE PROPOSED CONSERVATION AMENDMENT ACCURATELY EXPLAINS TO VOTERS THE MINIMAL FISCAL IMPACT OF THE PROPOSAL.

Likewise, the Financial Impact Statement prepared by the Financial Impact Estimating Conference presents a clear and unambiguous statement as to the estimated increase or decrease in any revenues or costs to State or local governments resulting from the proposed initiative as required by Section 100.371, Florida Statutes. This Court has reviewed many Financial Impact Statements for proposed initiatives and found this to be a narrower review focusing on the clarity of the statement and its accuracy in detailing likely costs. *See, e.g., Advisory Opinion to the Att’y Gen’l re Referenda Required for Adoption & Amend. of Local Govt. Comprehensive Land Use Plans*, 14 So. 3d 224, 226 (Fla. 2009); *Advisory Opinion to the Att’y Gen’l re Funding of Embryonic Stem Cell Research*, 959 So. 2d 195, 202 (Fla. 2007); *cf. Advisory Opinion to the Att’y Gen’l re Standards for Establishing Legis. Dist. Boundaries*, 2 So. 3d 161, 164 (Fla. 2009) (Court has “an obligation to review the ballot *as a whole* to ensure that no part of the ballot—which includes the financial impact statement—is misleading.”) (emphasis in original).

In the case of the proposed Conservation Amendment, the Financial Impact Estimating Conference found no automatic increases or decreases in costs or revenues, but it forecasted a revenue range based on existing forecasts. It also determined that some impacts cannot be determined. This Court has upheld a finding of a range of possible impacts within a valid Financial Impact Statement. *See Advisory. Opinion to Att’y Gen’l re Extending Sales Tax to Non-Taxed Services Where Exclusion Fails to Serve Public Purpose*, 953 So. 2d 471, 485 & 489 (Fla. 2000) (upholding financial impact statements which listed a range of possible impacts from \$0 to \$19 billion for one proposal and \$0 to \$8 billion for another). This Court likewise upheld the financial impact statement for an initiative where the impacts were found to be indeterminable. *See Protect People, Especially Youth, From Addiction, Disease, and Other Health Hazards of Using Tobacco*, 926 So. 2d at 1195.

This Court should find that the Financial Impact Statement complies with the requirements of Section 100.371, Florida Statutes.

### **CONCLUSION**

Because the proposed Conservation Amendment presents a single subject in compliance with Article XI, Section 3, and because the ballot title and summary clearly and accurately describe the chief purpose of the

proposal as required by Section 101.161, Florida Statutes, this Court should allow the Conservation Amendment to appear on the ballot. This Court should also hold that the Financial Impact Statement complies with the statutory requirements.

Respectfully submitted,

/s/ Jon L. Mills

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically this 24<sup>th</sup> day of June, 2013, to The Honorable PAM BONDI, Office of the Attorney General, The Capitol PL-01, Tallahassee, Florida 32399-1050, [oag.civil.eserve@myfloridalegal.com](mailto:oag.civil.eserve@myfloridalegal.com).

/s/ Jon L. Mills

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**CERTIFICATE OF TYPEFACE COMPLIANCE**

I HEREBY CERTIFY that this brief was prepared in Times New Roman 14-point font, in compliance with Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

/s/ Jon L. Mills

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