SUGAR, POLITICS, AND THE DESTRUCTION OF FLORIDA’S NATURAL RESOURCES: THE PROBLEM WITH CONSTITUTIONAL AMENDMENTS

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I. INTRODUCTION

"Unless someone like you cares a whole awful lot, nothing is going to get better. It's not."¹

Water pollution has officially become too severe to ignore in many parts of Florida.² Numerous algae blooms, which are formed from polluted waters, were found a few years ago in the Indian River Lagoon and caused the death of hundreds of marine animals including pelicans, dolphins, and manatees.³ Recently, the Lagoon suffered an incredible loss of “thousands of fish encompassing 30 or more species,” leaving fish carcasses all the way from Titusville to Melbourne due to another strain of algae blooms.⁴ Regardless, the Florida Legislature still refuses to dedicate necessary funds for cleanup projects even after a super majority of Florida residents voted to constitutionally dedicate funds towards cleanup efforts under the Florida Water and Land Conservation Initiative (2014) (“Amendment 1”).⁵ While Tallahassee continues to accept campaign contributions from the very industry that is destroying Florida’s natural resources, the world’s only everglades and the state’s fresh water supply is being destroyed.

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⁵ See infra Part IV.
Part II of this Article provides background into the destruction of the Everglades, the contamination of Lake Okeechobee, and the pollution of South Florida’s estuaries, all in the name of Big Sugar. It also addresses what steps must be taken in order to clean up the pollution from the agricultural runoffs and the impending safety issue of Lake Okeechobee’s old and brittle dike. Part III looks at how the voters of Florida tried to take the cleanup process into their own hands by introducing Amendment 1 to the ballot by a citizen initiative. This ballot initiative dedicates funds for purchasing land to build reservoirs and for assisting in the cleanup of existing pollution. Part IV discusses the policy reasons given by the State legislature for denying the funds to protect Florida’s water resources, even after it was passed as a constitutional amendment. It also addresses the current lawsuit that is pending in the Florida court system. Part V evaluates the campaign contributions being donated to Florida legislators from Big Sugar. Finally, Part VI concludes with what Florida can do going forward and evaluates a rigged system.

II. HOW IT ALL BEGAN

“When you concentrate on agriculture and industry and are frugal in expenditures, Heaven cannot impoverish your state.”

In the late 1800s, developers tried desperately to find a way to drain the Everglades because they saw it as “utterly worthless” and as a hindrance to progress. Many thought draining the Everglades was an

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6 See infra Part II.
7 See infra Part II.
8 See infra Part III.
9 See infra Part VI.
10 See infra Part IV.
11 See infra Part IV.
12 See infra Part V.
13 See infra Part VI.
impossible task.\textsuperscript{16} It was not until 1904, when Napoleon Bonaparte Broward was elected Florida governor, that the actual draining became a reality.\textsuperscript{17} Broward involved the federal government in the drainage efforts by promising that once they were drained, "the Everglades would be a prime area for sugarcane cultivation, an activity that 'would be of untold value to the state.'"\textsuperscript{18} He felt this project could ultimately free the country from dependence on foreign sugar and even stimulate the economy.\textsuperscript{19} The federal government decided to assist with the project and instructed the Army Corps of Engineers ("Army Corps") to build canals, pumps, and drainage systems to create the Everglades Agricultural Area ("EAA").\textsuperscript{20} The Army Corps created the EAA by turning the "worthless" swampland into 700,000 acres of "premier sugar-producing" land, lying on the south end of Lake Okeechobee.\textsuperscript{21} By 1929, the EAA, or the "Nation's Sugar Bowl," officially opened for business.\textsuperscript{22} The first one to invest in the area was Charles Stewart Mott, the vice president of General Motors.\textsuperscript{23} Mott claimed that his ancestors from centuries ago were farmers, which led to his desire to continue his heritage and to purchase land in the little town of Clewiston, Florida.\textsuperscript{24} Mott's company, U.S. Sugar Corp. ("U.S. Sugar"), profited for decades on sugar production, but his business remained fairly small scale until the Cuban Revolution in 1959.\textsuperscript{25} Florida and Cuba sugar producers were competing for decades, which was one of the reasons the EAA was so

\begin{thebibliography}{99}
\bibitem{16} Id. at 110.
\bibitem{17} Grunwald, \textit{supra} note 15, at 129-30.
\bibitem{19} Grunwald, \textit{supra} note 15, at 138.
\bibitem{20} Hollander, \textit{supra} note 18, at 6-7.
\bibitem{21} Id.
\bibitem{22} Id. at 174-75.
\bibitem{24} Id.
\bibitem{25} Id.
\end{thebibliography}
important to this country. Many believed that sugar was a national security issue because the United States relied so heavily on importing it from Cuba. Florida sugar proponents promoted U.S. Sugar as being good for national security and for the economy as a whole. However, based on the high demand of the sweetener, the United States was never able to release itself from the need to import Cuban sugar, until the revolution. The revolution put an embargo in place, which brought all imports to a halt. As a result, there was an immediate need to fill the void. Mott took advantage of the embargo by expanding U.S. Sugar and opening a second facility. Other investors also took note of the potential around Lake Okeechobee in the EAA area, including the Cuban-exiled sugar magnates, the Fanjuls. Alfonso Fanjul Sr. purchased 4,000 acres of land around the lake and started his business all over again on U.S. soil, creating Florida Crystals.

By the 1980s, Florida became the largest sugar producer in the country. Today, Florida designates over 400,000 acres of land for growing sugarcane, with “[c]ash receipts . . . exceed[ing] $800 million per year over the last decade” from the crop. Needless to say, creating

26 Hollander, supra note 18, at 38.
27 Id.
28 Id.
30 Id.
31 Id.
32 U.S. Sugar, supra note 23.
33 Id.
36 See generally L.E. BAUCUM, ET AL., UNIV. OF FLA. IFAS EXTENSION, AN OVERVIEW OF FLORIDA SUGARCANE (July 2002), http://hendry.ifas.ufl.edu/pdfs/overview_of_florida_sugarcane.pdf (discussing that there has been a decline in Florida sugarcane production from 454,000 acres in the 2000-01 crop year to 400,000 acres in the 2008-09 crop year).
37 FRITZ M. ROKA, ET AL., UNIV. OF FLA. IFAS EXTENSION, COSTS AND RETURNS FOR SUGARCANE PRODUCTION SOILS IN SOUTHERN FLORIDA 2008-09 1 (Mar. 2010), http://
the EAA and allowing the sugar industry to take root in Southern Florida was a huge success for Florida agricultural interests and for the economy. However, it did not come without consequences.

Seventy percent of the fresh water stream originally feeding into the Everglades was diverted to the EAA for agricultural purposes.\textsuperscript{38} The small amount of water that was still feeding into the Everglades was riddled with fertilizer and other harmful chemicals from agricultural runoff.\textsuperscript{39} Because of this, the Everglades did not have enough water for sustainability and started dying.\textsuperscript{40} Wading bird populations decreased between ninety to ninety-five percent, the Everglades as a whole decreased by fifty percent, and the area was invaded by exotic species.\textsuperscript{41} In 1988, the federal government stepped in and sued the South Florida Water Management District for contamination of a national wildlife refuge and national park.\textsuperscript{42} After years of litigation, the State finally settled and began an effort to restore the Everglades.\textsuperscript{43} The Everglades Forever Act was passed, which included important restoration efforts such as "new taxes and regulatory requirements on the agricultural areas upstream of the Everglades" and "the construction of six wetlands, known as Stormwater Treatment Areas, to filter agricultural runoff before it flowed into the Everglades."\textsuperscript{44} The Everglades is not the only natural resource being harmed by chemical runoff. Lake Okeechobee also receives polluted water from the farms' drainage canals.\textsuperscript{45} While it is necessary for farms to have a

ufdcimages.uflib.ufl.edu/IR/00/00/34/18/00001/SCO8800.pdf.

\textsuperscript{38} Hollander \textit{supra} note 18, at 144-50.

\textsuperscript{39} \textit{Id}.

\textsuperscript{40} Alfred R. Light, \textit{Ecosystem Management in the Everglades}, 14 NAT. RESOURCES \& ENV'T. 166, 167 (2000).


\textsuperscript{44} \textit{Id}. at 153; FLA. STAT § 373.4592(4) (2015).

\textsuperscript{45} \textit{See} Fishermen Against the Destruction of the Env't., Inc. v. Closter Farms, Inc., 300 F.3d 1294, 1297 (11th Cir. 2002).
drainage system so that the land will not be submerged under water, the polluted water is harmful to the life that lives in the lake.\textsuperscript{46} In fact, reports show that aquatic life in Lake Okeechobee declined by forty-five percent between August 2015 and August 2016.\textsuperscript{47} This has significantly affected the sport fishing industry in the area, which was known for its prized bass.\textsuperscript{48} There is a bigger problem, however. Due to the constant drainage from farms and the heavy rainfall in the area, Lake Okeechobee is constantly at its capacity.\textsuperscript{49} In order to prevent the lake from spilling over and breaking the eighty-year-old earthen dike, the Army Corps decided to release billions of gallons of this polluted lake water into the connected estuaries.\textsuperscript{50} This polluted water, when released, flows east out of the lake down the St. Lucie River Estuary into the Indian River Lagoon and eventually to the Atlantic Ocean and west out of the lake down the Caloosahatchee River Estuary and into the Gulf of Mexico.\textsuperscript{51}

These estuaries “depend on a naturally calibrated balance of salt and fresh water,” and this overflow is detrimental to them.\textsuperscript{52} Estuaries are crucial to the ecosystem because they are a breeding ground for marine life.\textsuperscript{53} After the release of Lake Okeechobee’s polluted waters, manatees, shellfish, and sea grass—which help sustain the estuaries—were badly harmed.\textsuperscript{54} More detrimentally, algae blooms developed and quickly spread.\textsuperscript{55} During the daylight “algae produce oxygen through photosynthesis,” which replenishes the oxygen in the water.\textsuperscript{56} However, at night the blooms consume the water’s oxygen.\textsuperscript{57} When there are

\textsuperscript{46} Id. at 1296.
\textsuperscript{49} Id.
\textsuperscript{50} Id.
\textsuperscript{51} Id.
\textsuperscript{52} Id.
\textsuperscript{53} Id.
\textsuperscript{54} Id.
\textsuperscript{55} Id.
\textsuperscript{56} Id.
\textsuperscript{57} Waymer, \textit{supra} note 4.
\textsuperscript{58} Id.
several blooms in the water it can severely limit the amount of oxygen that is left for all the marine life and ultimately kill them.\textsuperscript{58} Additionally, there are some kinds of algae that release deadly toxins into the water and some kinds that will even clog fish gills.\textsuperscript{59}

The pollution was so bad that on February 26, 2016, the governor declared a state of emergency for the communities suffering from the pollution, stating “extensive environmental harm” and “severe economic losses.”\textsuperscript{60} People in these communities reported “dead sea life, unfit water conditions for swimming and fishing, and a rank smell.”\textsuperscript{61} However, businesses never received any help despite the state of emergency.\textsuperscript{62} This incident was compared to the Flint, Michigan, water crisis, and proponents for the Everglades even published an advertisement in the New York Times that specifically called out U.S. Sugar for the pollution.\textsuperscript{63}

The pollution being emitted into the oceans from Lake Okeechobee is also having a harsh impact on Florida’s tourism industry.\textsuperscript{64} Small fishing businesses are struggling, with one owner claiming that there has been a fifty percent decline in his bait and tackle shop business.\textsuperscript{65} Other businesses report that the dead sea animals are having an impact on their customers.\textsuperscript{66} People are unable to go swimming, fishing, or boating due to the “black curtain.”\textsuperscript{67} The nickname “black curtain” was coined because one side of the ocean appears perfectly clear while the other side is dark, almost like a “curtain was pulled on the waterway.”\textsuperscript{68} Natural resources are so important to

\textsuperscript{58} Id.
\textsuperscript{59} Id.
\textsuperscript{60} David Guest, \textit{South Florida’s Tourist Season from Hell}, \textsc{Earthjustice} (Mar. 2, 2016), http://earthjustice.org/blog/2016-february/south-florida-s-tourist-season-from-hell.
\textsuperscript{61} Id.
\textsuperscript{62} Id.
\textsuperscript{63} Id.
\textsuperscript{64} Id.
\textsuperscript{65} Id.
\textsuperscript{66} Id.
\textsuperscript{67} Id.
\textsuperscript{68} Id.
Florida because they “attract more than $67 billion in tourism and recreational spending each year.”\textsuperscript{69} Another $4.3 billion is added to the state’s economy from the fishing industry alone.\textsuperscript{70}

Communities caused so much uproar over the slow degradation of their estuaries that the governor tried to step in and do something about it.\textsuperscript{71} Governor Rick Scott in 2013 proposed two different projects totaling $130 million.\textsuperscript{72} A law was passed requiring water flowing into the Everglades to be “filtered and treated,” unlike the estuaries, so his first proposal was to allow some of the Lake Okeechobee water to be cleaned and then to flow south into the Everglades, instead of diverting it—unfiltered—east and west into the estuaries.\textsuperscript{73} The second project proposed was additional spending on cleanup efforts in the St. Lucie River Basin before releasing water into the river.\textsuperscript{74}

While these are definitely steps forward, $130 million is just a drop in the bucket compared to what is actually required to clean Florida’s fresh water sources. According to the Stockholm Environment Institute, which is based at Tufts University, the “algae and red tide outbreaks caused by water pollution cost Floridians between $1.3 billion and $10.5 billion each year.”\textsuperscript{75}

Cleanup efforts are needed to address Florida’s current situation; however, the State should also be coming up with ideas to be more proactive and not reactive. As such, the single most important issue that must be addressed is the frail dike that currently surrounds Lake Okeechobee.\textsuperscript{76} This dike at any moment could break, posing a “grave and imminent danger.”\textsuperscript{77} The dike was built in the 1920s after

\textsuperscript{70} Id.
\textsuperscript{71} Alvarez, supra note 48.
\textsuperscript{72} Id.
\textsuperscript{73} Id.
\textsuperscript{74} See Alvarez, supra note 48.
\textsuperscript{75} Id.
hurricanes caused Lake Okeechobee to spill into the surrounding area, killing 2,500 people. However, it was built using the soil, so it has slowly started deteriorating over the years, even sprouting leaks. Some believe that the next time a massive hurricane hits Southern Florida, the dike will break and water will spill into the homes and farms surrounding the area, killing possibly more people than the 1920s incident. As one director from the South Florida Water Management District stated, “All it will take is one tropical storm to put us in a massive crisis mode.”

Unfortunately, there is a holdup with fixing the dike, and once again, it all has to do with money. The Governor blames the federal government for refusing to pay for some of the costs, while environmentalists blame the Governor and the legislature for severely cutting the budget of the South Florida Water Management District, which directly oversees Florida’s water flow. In fact, according to the Governor’s proposed budget reductions in 2014, $10.4 million in total was proposed to be cut from the Florida Fish and Wildlife Commission, which included approximately $600,000 or 16% from the Lake Okeechobee restoration budget, $854,000 or 100% in manatee rehabilitation funds, and $839,000 or 50% from the algae bloom program.

No matter what course of action is taken to prevent another spillage of the lake and to help protect the estuaries, it is going to take time and money. While nothing can be done about time, there is something that can be done about money. And that is exactly why thousands of local Floridians decided to take matters into their own hands.

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78 Id.
79 Id.
80 See id.
81 Id.
82 See id.
83 Id.
III. AMENDMENT 1

"Democracy must be something more than two wolves and a sheep voting on what to have for dinner."\textsuperscript{85}

Having difficulty getting the necessary funds from the state government, environmentalists discussed a constitutional amendment.\textsuperscript{86} There are actually five different ways a constitutional amendment can get on the Florida ballot.\textsuperscript{87} “Per section 1 [of article IX],” the State legislature can “put a proposed amendment on the ballot if 60% or more of the legislators in each chamber agree to do so in a joint resolution.”\textsuperscript{88} Section 2 outlines the Constitutional Revision Commission (“CRC”), which “convenes every 20 years for the purpose of reviewing Florida’s Constitution and proposing changes for voter consideration.”\textsuperscript{89} The next CRC is scheduled to meet in 2017.\textsuperscript{90} Section 3 allows amendment by citizen initiative, which requires enough signatures to equal “8 percent of the total number of votes cast in the last presidential election.”\textsuperscript{91} Section 4 is by a constitutional convention, which requires proponents to “collect signatures equal to 15 percent of the total” number of votes cast in the last presidential election.\textsuperscript{92} Finally, section 6 establishes the Taxation and Budget Reform Commission, “which may place proposed amendments on the ballot if 18 of its 25 members approve.”\textsuperscript{93}

\textsuperscript{85} JAMES BOVARD, LOST RIGHTS: THE DESTRUCTION OF AMERICAN LIBERTY 333 (St. Martin’s Griffin 1995).
\textsuperscript{86} See generally Tom Hudson, Amendment 1: The Price to Protect Florida’s Land & Water, WLRN PUB. RADIO & TELEVISION (Oct. 27, 2014), http://wlrn.org/post/amendment-1-price-protect-floridas-land-water (explaining that after the economy stabilized in Florida, state officials and environmentalists discussed a constitutional amendment).
\textsuperscript{89} Id.
\textsuperscript{90} Id.
\textsuperscript{91} Laws governing the initiative process in Florida, BALLOTpedia, https://ballotpedia.org/Laws_governing_the_initiative_process_in_Florida (last visited Apr. 25, 2016).
\textsuperscript{92} Id.
\textsuperscript{93} League Women Voters Okaloosa Cnty., supra note 88.
The citizen initiative is not an easy task—it is difficult, costly, and time-consuming. But it is a tool being used more and more by voters out of sheer frustration with their representatives. However, many say this process is clogging up the state constitution. There have even been proposals to “clean up” the constitution by taking out any statutory-type provisions. To put it into perspective, the U.S. Constitution is 8,700 words, while the Florida Constitution is eighty-seven pages and still growing. Some—mostly representatives—say the amendments that go into the state constitution should be more selective, while others say that it is a “people’s document . . . and if the Legislature ignores the people, they have the right to act.” Ironically, from 1978 until now, the legislature passed sixty-one of the 101 total amendments. Only twenty-seven have actually come from a citizen initiative.

Environmentalists ultimately decided that the best course of action was to create a citizen initiative by proposing a ballot initiative that would constitutionally set aside funds to purchase additional land for reservoirs and to help restore and manage lands already under the state’s control. This initiative could help prevent future water crises that are already plaguing cities across the country such as Toledo, Ohio, where residents were told “not to drink, boil or bathe in [the] water supply” due to an algae bloom outbreak in Lake Erie. Passing a constitutional amendment would mean that lawmakers would not be able to cut funding for these preservation programs during tough economic conditions.

95 Id.
96 Id.
97 Gary Blankenship, Senator Wants to Clean up Florida Constitution, FLA. BAR NEWS (Feb. 1, 2005), http://www.floridabar.org/divcom/jn/jnnews01.nsf/8c9f13012b96736985256aa900624829/fd33d5d4df8e9c1b885256f95004e655f!OpenDocument.
98 Dockery, supra note 94.
99 Id.
100 Id.
101 Id.
102 Hudson, supra note 86.
103 Id.
times—a lesson many should take from the Flint, Michigan, water crisis.

Though not an easy feat, all required 683,149 signatures were collected and Amendment 1 was officially added to the November 4, 2014, Florida state election ballot. The official ballot summary for Amendment 1 stated that this initiative would:

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.

The “excise tax on documents” is money that comes from the real estate documentary stamp tax, which was previously dedicated to affordable housing, economic development, transportation, and environmental uses. When the housing market crashed, Florida set aside a large portion of that money for “general purposes.” Now that the economy is doing better and the state budget has grown, the funding has been restored to its previous designation. Amendment 1 requests that thirty-three percent of these funds be constitutionally dedicated to the Land Acquisition Trust Fund.

While supporters say that this amount is trivial to the entire picture or “less than one percent of the state’s budget,” opponents say that the money should not be constitutionally designated towards environmental programs because programs such as affordable housing, which come from the same fund, could very well go without. While

104 BALLOTPEDIA, supra note 91.
105 Id.
106 Hudson, supra note 86.
107 Id.
108 Id.
109 Id.
110 Id.
housing advocates do not necessarily oppose environmental funding, they feel that the State legislature should ultimately decide the budget, not the constitution. David Hart, executive vice president of governmental affairs for the Florida Chamber of Commerce, noted that Amendment 1 could start a bad precedent because it would "tie the hands of legislatures during tight economic times," making them unable to effectively balance the budget each year.

The initiative went to the November 2014 election ballot and was approved by a whopping super majority of seventy-five percent. It was clear that Florida residents wanted to do everything they could to protect their natural resources. Thirty-three percent of the excise tax amounted to more than $700 million a year, so it was a huge victory for environmentalists. Little did they know, the debate was far from over.

IV. THE COMPLEX STATE CONSTITUTION

"I expect the Legislature to fight at every possible front, and our hope is that justice will be done and the will of the people of Florida will prevail."  

Florida is not the only state that has introduced bills related to constitutional spending. There were three budget amendments proposed in Minnesota that wanted to limit the state’s ability to raise taxes and to restrict lawmakers from using available resources. Many opposed stated the amendments would create unintended consequences, such as "government shutdowns, gridlock and budget gimmicks; increased cost-shifting to local government and pressure on property taxes; more impediments to tax reform; and further risks to the state’s credit

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111 Id.
112 Id.
114 Id.
115 Id.
rating.”¹¹⁷ None of the amendments passed.¹¹⁸ North Carolina introduced legislation that would dictate spending and cap taxes.¹¹⁹ Opponents said allowing the constitution to do this “would be devastating for [the] state’s ability to invest in schools, health, economic development and other critical public structures.”¹²⁰ This amendment also did not pass.¹²¹

The Florida Legislature felt similarly to Minnesota and North Carolina, and even though the constitution now mandates thirty-three percent of the real estate stamp tax to be put into the Land Acquisition Trust Fund, they refused to do so.¹²² The State legislature instead voted themselves to use the money “for routine expenses, such as salaries, vehicles and insurance in agencies involved in land management,” acting as if the ballot initiative never happened.¹²³ It seems that they decided the “power of the purse” is stronger than a citizen initiative.

Upset with such a blatant disregard for the voice of Florida residents, four environmental groups filed a lawsuit against the government.¹²⁴ The lawsuit says that the legislature “violated its duty, violated the [c]onstitution and violated the trust to which the voters dedicated these funds when it wrongfully diverted at least $237 million in trust funds to pay for general state expenses not allowable under the amendment.”¹²⁵ After a $400 million tax cut was approved as well, the amount left to acquire new lands was minimal.¹²⁶ The lawsuit seeks declaratory relief and asks the court to find that the legislature violated

¹¹⁷ Id.
¹¹⁸ Id.
¹²⁰ Id.
¹²² Fleshler, supra note 113.
¹²³ Id.
¹²⁴ Id.
¹²⁵ Id.
the Florida Constitution by misappropriating Amendment 1 funds. In response, the legislature asked for a dismissal stating that "while the environmental groups may ‘dislike and disagree with the [l]egislature’s spending decisions,’ that does not mean that a judge should violate the separation of powers by stepping in and telling the [l]egislature how to do its job." Environmentalists do not believe this is a separation of powers issue because the constitution binds everyone, including the legislature. In addition, it is the duty of the courts to interpret the laws, so the courts are not telling the legislature how to “spend their money.” Ultimately, the courts will have to determine if the government is bound by the laws under the constitution, which is the true entity telling them how to spend their money.

The defining issue in this case all comes down to this: Does Amendment 1 really belong in the Florida Constitution? Floridians are given more rights than any other state to propose amendment changes to the state constitution. However, there really are no restrictions on what can and cannot be voted on. Spending is a statutory amendment that is typically made through the legislature, but the constitution currently has several statutory-type provisions within its pages. Senator Blankenship tried a decade ago to clean up all the statutory provisions in the Florida Constitution, but we have yet to see that happen because many believe “cleaning up” the constitution would bitterly divide the legislature and the people of Florida. The reason so many citizen initiatives have been appearing on ballots is the simple fact that people do not trust their representatives. Instead of allowing them to pass laws on issues that represent their constituents, representatives are being told explicitly what to do by citizen initiative. A suggestion by the League of Women Voters was “to allow citizens to propose statutory

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127 Id.
128 Fleshler, supra note 113.
129 Id.
130 See Complaint, supra note 126, at 7.
131 League Women Voters Okaloosa Cnty., supra note 88.
132 See id.
133 See Blankenship, supra note 97.
134 Id.
135 Id.
136 Id.
changes by initiative instead of just constitutional changes.” However, some were cautious about that route because California uses that system and believes that it “works poorly and burdens the state with unnecessary, unrealistic, and sometimes, conflicting mandates.”

This case could be a turning point in how constitutional amendments are handled in the State of Florida. If the court decides that the legislature is bound by the amendment, then Florida will have the monetary resources to not only help clean the estuaries but also to build reservoirs for Lake Okeechobee’s overflow. If the court decides that there is a separation of powers issue, then there will likely be no spending provision proposals going forward. However, there are other spending provisions in the constitution, such as the Everglades Trust Fund, which has not caused the same backlash. This begs the question, other than a separation of powers argument, is there a bigger reason why the elected officials of the Florida Legislature refuse to adhere to Amendment 1?

V. SUGAR SWEETENS POLITICS

"Fire must be fought with fire, and sugar has been entangled with politics from the time of the first Napoleon down to the present day." Environmentalists have another theory. They believe this obstruction of justice comes from one major player: U.S. Sugar. When Amendment 1 was placed on the ballot, different environmental groups, including the University of Florida, conducted scientific studies and identified certain areas south of Lake Okeechobee that would be “crucial in helping clean the Everglades.” The university concluded that obtaining the land occupied by U.S. Sugar would be critical in the

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137 Id.
138 Id.
139 See FLA. CONST. art. X sec. 17.
140 Charles A. Crampton, The opportunity of the sugar cane industry, 168 N. AM. R. 276, 282 (1899).
142 Id.
cleanup effort.\textsuperscript{143} The Senate agreed to the purchase of U.S. Sugar's land, which was slated to be used as a reservoir to catch the polluted water coming from Lake Okeechobee and then filtered before it was allowed to flow back into the Everglades.\textsuperscript{144} However, U.S. Sugar suddenly had other plans for this 46,000 acre parcel of land: they wanted to "develop 18,000 homes and 25 million square feet of stores, offices, warehouses[,] and other commercial buildings."\textsuperscript{145} It seems that U.S. Sugar did not realize the economic possibilities of the land when it agreed to sell it to the state. If the land was purchased by the State for conservation, the development project would no longer be an option.\textsuperscript{146} However, if lawmakers were able to bypass this state purchase opportunity, U.S. Sugar would have another shot at developing this land.\textsuperscript{147} So U.S. Sugar began lobbying hard to prevent the purchase of the land, which they originally agreed to sell at fair market value in 2010.\textsuperscript{148} They pumped over $550,000 into several 2016 campaigns for both Democrats and Republicans.\textsuperscript{149} They also contributed $25,000 to the two budget chiefs' political action committees, who each had a direct say on the land purchase.\textsuperscript{150}

Originally, the Senate agreed to the purchase of this land but changed their position to oppose the acquisition.\textsuperscript{151} The budget chief for the Senate, Tom Lee, said, "There is a belief that acquiring land in this moment in history is probably not the best bang-for-the-buck."\textsuperscript{152} He also said that the government should not "go out in the first year of (Amendment 1) and blow a bunch of money and throw in a bunch of projects without going through a process that identifies the best scientific use of these limited resources."\textsuperscript{153} The ironic part is that there was not an overwhelming opposition to this purchase until U.S. Sugar

\textsuperscript{143} Id.
\textsuperscript{144} Id.
\textsuperscript{145} Id.
\textsuperscript{146} Id.
\textsuperscript{147} Id.
\textsuperscript{148} Id.
\textsuperscript{149} Id.
\textsuperscript{150} Id.
\textsuperscript{151} Id.
\textsuperscript{152} Id.
\textsuperscript{153} Id.
began donating hundreds of thousands of dollars to campaign funds.\textsuperscript{154} Ultimately, they got their wish, and the purchase option was taken off the table.\textsuperscript{155}

Even though the government tried to buy the land of U.S. Sugar, not Florida Crystals, the Fanjuls still donated a lot of money to the campaign funds themselves.\textsuperscript{156} According to the Center for Responsive Politics, since 2004 the Fanjul family donated almost $4 million to candidates, political parties, and political action committees.\textsuperscript{157} The reasoning? "[I]f government built wetland marshes using U.S. Sugar lands to store and cleanse filthy agricultural waters, then the state would be a step closer to key parcels owned by the Fanjuls in the [EAA]."\textsuperscript{158} At the same time, the Fanjuls are trying to push through zoning changes that will allow for new developments in the EAA, such as ports.\textsuperscript{159} Do they really care about ports? Probably not. They just need to ensure from every direction that their land will not be acquired for cleanup purposes.\textsuperscript{160} During the 2016 presidential election cycle, the Fanjuls assisted with getting Marco Rubio a nomination seat.\textsuperscript{161} When asked about his involvement with Big Sugar, Rubio used the same tag line that was adopted by sugar proponents in the mid-1900s prior to the Cuban Revolution, "sugar subsidies are a matter of national security."\textsuperscript{162}

Recently, a professor of medicine discovered that the sugar industry not only influenced political campaigns but even influenced medical journals.\textsuperscript{163} Uncovered internal documents from the 1960s

\textsuperscript{154} \textit{Id.}
\textsuperscript{155} Dr. Thomas Van Lent, \textit{An Update on Water Storage}, EVERGLADES FOUND. (Mar. 16, 2016), http://www.evergladesfoundation.org/2016/03/16/an-update-on-water-storage/.
\textsuperscript{156} Dexter Filkins, \textit{Swamped}, NEW YORKER (Jan. 4, 2016), http://www.newyorker.com/magazine/2016/01/04/swamped-the-political-scene-dexter-filkins.
\textsuperscript{157} \textit{Id.}
\textsuperscript{159} \textit{Id.}
\textsuperscript{160} See \textit{id.}
\textsuperscript{161} \textit{Id.}
\textsuperscript{162} \textit{Id.}
\textsuperscript{163} Anahad O’Connor, \textit{How the Sugar Industry Shifted Blame to Fat}, N.Y. TIMES
showed that three Harvard researchers were paid the equivalent of $49,000 today to publish an article about sugar, fat, and heart disease.\textsuperscript{164} The Sugar Research Foundation paid the researchers to write an article that “minimized the link between sugar and heart health,” casting the blame instead on saturated fat.\textsuperscript{165} This article influenced the government’s dietary recommendations for decades, “which emphasized saturated fat as a driver of heart disease while largely characterizing sugar as empty calories . . . .”\textsuperscript{166}

Since the 1960s, the “academic conflict-of-interest rules” have changed significantly, but the discovery of these papers is a reminder of “why research should be supported by public funding rather than depending on industry funding.”\textsuperscript{167} The same should go for campaign contributions. In a society where there is no limit to campaign financing, it is almost impossible to disassociate big business with politics. Unfortunately, the representatives of Florida have fallen into this sweet, sticky trap.

VI. LOOKING FORWARD

“My message to families being impacted is that we will not give up on you.”\textsuperscript{168}

Here is the overwhelming problem facing Florida today: Lake Okeechobee’s dike is not large enough nor strong enough to hold the excess water from hurricanes and rainstorms in addition to the chemical runoff from all the agricultural businesses surrounding the lake.\textsuperscript{169} As such, the Army Corps has been releasing this toxic water into the estuaries that flow east and west and eventually into the ocean.\textsuperscript{170} This release is causing algae blooms in the fragile estuaries, killing native

\textsuperscript{164} Id.
\textsuperscript{165} Id.
\textsuperscript{166} Id.
\textsuperscript{167} Id.
\textsuperscript{168} Alvarez, supra note 48.
\textsuperscript{169} Id.
\textsuperscript{170} Id.
species and harming Floridians’ way of life.  

In an effort to prevent this, the citizens put Amendment 1 on the ballot to designate money specifically to purchase lands to build reservoirs and for assistance with cleanup efforts. It even passed by an extraordinary super majority of seventy-five percent. However, the State legislature refuses to abide by the new constitutional amendment and argues that the courts cannot enforce the amendment because it would be a separation of powers violation. However, it is clear that the representatives refusing to assist with the acquisition of these lands are bought by Big Sugar.

So what needs to be done? Well, first and foremost, an immediate solution to the state’s water crisis needs to be found because it may take years before the courts decide the outcome of Amendment 1. Luckily, there may actually be a light at the end of that tunnel. The incoming Senate President, Joe Negron, announced in August 2016 that he was going to find a way to purchase the necessary land south of Lake Okeechobee. Negron proposed to purchase one of two different 60,000-acre parcels of land in the EAA. One is “owned 60 percent by Florida Crystals, 30 percent by U.S. Sugar and 10 percent by other landowners, including the state.” The other parcel is “owned 60 percent by Florida Crystals, 30 percent by King Ranch and 10 percent from other landowners.” Florida Crystals said that they would be “reviewing the details of the plan.” If this purchase actually happens it could be the immediate need Florida is looking for, and it is the closest

171 Id.
173 Fleshler, supra note 113.
174 Id.
175 See Filkins, supra note 156.
177 Id.
178 Id.
179 Id.
180 Id.
thing to a solution thus far. However, if Big Sugar agrees to sell their land, it is going to come with a hefty price tag.\textsuperscript{181}

Secondly, the CRC should address the state’s issue with constitutional amendments. Senator Blankenship had the right idea over a decade ago when he suggested that the constitution should be “cleaned up” and that all statutory-type amendments should be removed.\textsuperscript{182} However, the State of Florida cannot just eliminate constitutional provisions that were voted on without having a separate outlet for them to exist as binding law. In a world where voters already distrust their representatives, this would cause even more animosity with Tallahassee. But something has to be done because current constitutional provisions—such as Amendment 1—are not even being followed.

It has been suggested that the State adopt a similar amendment process to California where statutory provisions are put on the ballot, not just constitutional amendments.\textsuperscript{183} If this were the current law in Florida, there would not be a pending lawsuit because there would be no “separation of powers” issue. Laws such as Amendment 1 should be made through statutory provisions. If a spending provision is passed by constitutional amendment and results in a negative consequence, the only way to fix the amendment is through another amendment. It is easier for legislators to repeal or amend a statutory law than to fix the problem. The Florida Constitution is supposed to be the supreme law of the state, establishing fundamental rights and guidelines for the government. There really is no place for statutory-type amendments. The distinction between the two was best stated in an Advisory Opinion to the Attorney General:

\begin{quote}
The legal principles in the state constitution command a higher status than any other legal rules in our society. By transcending time and changing political mores, the constitution is a document that provides stability in the law and society’s consensus on general,
\end{quote}


\textsuperscript{182} Blankenship, \textit{supra} note 97.

\textsuperscript{183} See id.
fundamental values. Statutory law, on the other hand, provides a set of legal rules that are specific, easily amended, and adaptable to the political, economic, and social changes of our society.\textsuperscript{184}

As such, the CRC should examine this issue and consider a revision that would add a statutory initiative procedure.

Lastly, the CRC should not propose a repeal to Amendment 1. The CRC, just like everything else involved with government, is a political group.\textsuperscript{185} It is made up of thirty-seven people who are appointed by five different leaders within the State of Florida.\textsuperscript{186} It sounds pretty bipartisan until you analyze who appoints the representatives. Fifteen are appointed by the Governor, who is Republican; nine are appointed by the Speaker of the House, who is Republican; nine are appointed by the President of the Senate, who is Republican; three are appointed by the Chief Justice of the Florida Supreme Court, who was selected by a Republican governor; and finally, one is the Attorney General of Florida herself, who is a Republican.\textsuperscript{187} Amendment 1 has not been favored by many Republican leaders. The CRC would be the perfect opportunity to suggest a repeal, but the issue should be left in the hands of the court.

Environmentalists hope that the court will sort out the issue in their favor and require the funds to be designated. However, if this case makes it to the Florida Supreme Court, which it has a chance of doing, there is another conflict. The current Florida Supreme Court Chief Justice, Jorge Labarga, has close ties to the sugar industry. He was born in Cuba but grew up in the Lake Okeechobee agricultural area.\textsuperscript{188} The

\textsuperscript{184} Advisory Op. To Att’y Gen. re: Limited Marine Net Fishing, 620 So. 2d 997, 1000 (Fla. 1993) (McDonald, J., concurring).


\textsuperscript{186} Id.

\textsuperscript{187} Id.

\textsuperscript{188} Jan Pudlow, Jorge Labarga: Chief Justice of the Florida Supreme Court, Fla. B. (Sept./Oct. 2014), http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/Articles/
Fanjul family hired his father after they fled from Cuba, and he worked in the sugar mill as Justice Labarga grew up.\textsuperscript{189} It seems that every avenue Amendment 1 tries to take leads straight to a pile of sugar.

No matter what side of the aisle you are on, Florida’s water resources affect everybody. It is time to put the necessary money into saving our water supply and not into the hands of our politicians.

\footnotesize{\textsuperscript{189} Id.}