IN THE SUPREME COURT OF FLORIDA

BOB MARTINEZ, Governor of the State of Florida, Appellant, vs. THE FLORIDA LEGISLATURE, etc., et al, Appellees.	*	CASE NO. 73,601

INITIAL BRIEF OF APPELLANT,
BOB MARTINEZ, GOVERNOR OF THE STATE OF FLORIDA

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PRELIMINARY STATEMENT

The Appellant will be referred to as the Appellant or the Governor and the Appellees will be referred to as Appellees or the Legislature; each as the context may require. The Record will be referred to as (R:), followed by the appropriate page number.

INTRODUCTION

It is apparent that the trial court did not fully appreciate the significance of this Court's order transferring the case.[1] As a result, the Governor was frustrated in developing a full record to assist this Court in resolving this important dispute between the legislative and executive branches of government concerning their proper roles in the appropriation and expenditure of state revenues.

The Legislature seized upon this lack of understanding to present an hermetically sealed and sterilized issue and successfully prevailed upon the trial court to decide that issue in a procedural straightjacket. Hence, what the Legislature

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[1]At the hearing on the Motion for Summary Judgment, the Court opined: "It is still beyond me why the Supreme Court didn't keep this case." (R: 1736).

described as "constitutionally important issues" were relegated to a narrow examination of only the language of the appropriations bill without any serious inquiry into the significance of the intent documents which is at the bottom of these "constitutionally important issues."

STATEMENT OF THE CASE AND FACTS

The Legislature originally filed a Petition for Writ of Mandamus in this Court seeking to expunge from the state's official records selected gubernatorial line item vetoes of specific appropriations (R: 3). The Governor moved to dismiss that Petition on several grounds, one of which was the necessity to explicate the entire appropriations process in a fact finding forum (R: 119). In response to that Motion to Dismiss this Court dismissed the Petition and transferred the case to the Leon County Circuit Court (R: 1).

The Legislature filed an Amended Complaint for Declaratory Judgment in the Leon County Circuit Court seeking a declaration that the specifically enumerated gubernatorial vetoes were invalid (R: 235). The Governor filed an Answer, Affirmative Defenses, Counterclaim and Cross-claim (R: 324). The Governor attempted to raise the material issues involved in the appropriations process, which are essential to resolution of

the "important constitutional issues" described in the Legislature's Petition before this Court (R: 4). The Governor did this in compliance with his understanding of the Supreme Court Order dismissing the Petition for Writ of Mandamus.

Appellant raised one of these issues as his first affirmative defense to the Amended Complaint, alleging:

> The portions of the appropriations bill vetoed by the Governor are specific appropriations within the meaning of Article III, Section 8, of the Florida constitution. As described more particularly in the Governor's counterclaim below, these specific appropriations appear in the legislative intent documents and constitute identifiable, integrated funds which the legislature has allocated for a specific purpose. The D-3A's are a part of the legislative intent document and furthermore were expressly incorporated into the appropriations bill by reference in the letter, dated June 22, 1988, transmitting the intent documents as required by Section 216.181, Florida Statutes, from the Chairmen of the legislative appropriations committees to the Governor, Comptroller, and Auditor General. (Copies of the letter of transmittal, the summary statement of intent, and appropriations bill are attached hereto as Exhibit 1. A copy of the D-3A's are being filed under separate cover with the Court and will be available for inspection by all parties). As specific appropriations in a general appropriations bill, the expenditures are subject to the Governor's veto power.

(R: 327). Appellant also raised affirmative defenses alleging that the Complaint failed to state a cause of action and that the Florida Legislature and the Plaintiffs in their official capacity did not have standing to bring this action (R: 327).

Appellant counterclaimed and cross-claimed (Count III) for a declaratory judgment asking the trial court to determine the legal significance of the intent documents (R: 328; 331). Appellant alleged in the counterclaim that he believes that the detailed allocations in the intent documents are specific appropriations in the General Appropriations Act, but as a result of the Legislature's actions and allegations in the Amended Complaint a bona fide dispute exists between the Governor and the Legislature as to the legal significance of the intent documents. The intent documents include the Summary Statement of Intent (R: 743) and the more detailed statement of intent known as the D-3A's (R: 743; and 4 boxes filed with Court under separate cover and separately paginated). The Statement of Intent is required to be prepared by the chairmen of the legislative appropriations committees after the enactment of the appropriations bill and, together with the General Appropriations Act and other acts containing appropriations "shall be considered the original approved operating budget", Section 216.181(1) and (3) and Section 216.011(1)(w), Florida Statutes. This Statement of Intent is transmitted to the

Executive Office of the Governor, the Comptroller, the Auditor General, and each agency and is to be used to determine compliance with the General Appropriations Act. Section 216.181(2), Florida Statutes.

The broad general categories of appropriations contained within the General Appropriations Act are broken down into the specific appropriations items in the intent documents (R: 743). Indeed, the administrative agency to which the appropriation is made must, in many instances, look to the intent documents to determine the specific appropriation (R: 673, et seq.). The vetoes of which Appellees here complain are vetoes of specific appropriations contained within these intent documents.

The Governor also cross-claimed against the Secretary of State and Comptroller seeking a declaration as to the constitutionality of Chapter 88-556 ("the implementing bill") and Chapter 88-557 ("the conforming bill") (R: 331, et seq.). A review of these statutory enactments completes the picture of the appropriations process for the fiscal year 1988-1989. Both Chapters 88-556 and 88-557 are a "hodgepodge" of statutory amendments and enactments intended to implement the appropriations bill and conform the substantive law to the various appropriations. In moving to dismiss the Petition for Writ of

Mandamus before this Court, Appellant stated that the implementing and conforming bills raised related considerations which should be addressed in a circuit court proceeding in connection with the issues involving the vetoes and intent documents (R: 25).

After Appellant filed his Answer, Affirmative Defenses, Counterclaim and Cross-claim, Appellees filed several motions. First, Appellees moved to bifurcate consideration of the Amended Complaint from consideration of the Cross-claim (R: 340). On the day of the hearing on this Motion to Bifurcate, Appellant filed an amendment to the Motion seeking to expand its earlier request so as to also bifurcate consideration of the Counterclaim from consideration of the Legislature's sole issue of the validity of the enumerated vetoes raised by the Legislature's Amended Complaint (R: 351). Appellees also moved to strike Appellant's second affirmative defense which alleged that the Amended Complaint should be dismissed for failure to state that the appropriations which were vetoed by the Governor constitute binding restrictions on the spending practices of the executive (R: 351). The Legislature did not move to strike the first or third affirmative defense.

The trial court granted the original Motion to Bifurcate consideration of the Cross-claim but denied the

Amended Motion to Bifurcate which contained the Motion to Strike the Second Affirmative Defense (R: 726). The bifurcation order covered the trial only and not discovery (R: 726).

Secondly, Appellees moved to dismiss the counterclaim, inter alia, for failure to state a cause of action in that there is no actual controversy over future rights which require adjudication independent of that alleged in the Amended Complaint (R: 368).

Lastly, Appellees moved for the entry of final summary judgment in its favor on its Amended Complaint, alleging that the only two facts necessary for a determination were not in dispute, i.e. the enactment of the General Appropriations Act and the filing of the veto message. Consequently, the Legislature contended that it was entitled to judgment because the vetoes were of amounts not contained in the General Appropriations Act. In response to the Motion for Summary Judgment, Appellant filed the depositions of Sam McCall and Robert Sym, the Deputy Auditors General, and Jim Carpenter, the Assistant Auditor General, together with affidavits of budget directors for various state agencies. In each of the affidavits, the budget director describes the appropriations documents and agency budgets as consisting of the general categories contained within the General Appropriations Act and

the specific direction as to how appropriated funds are to be spent, which is contained within the Summary Statement of Intent and detailed D-3A's (R: 673, et seq.). The budget directors also testified by way of affidavit that they had been advised by legislative appropriations committee staff that the agency was required to expend the money in accordance with the intent documents and that the Comptroller's office has on occasion requested identification of a specific appropriation in the intent documents to support a particular disbursement request (R: 673, 3t seq.). The auditors general testified that in auditing an agency, a comment would be written in the audit report of that agency for failure to comply with the intent documents. Mr. Carpenter also testified that the designation of "Major Issues"[2] in the Summary Statement of Intent was "an expression of what they [the Legislature] had provided money for" (R: 616).

The Governor filed a Motion for Summary Judgment directed at Counts I and II of the cross-claim maintaining that as to those counts there were no disputed issues of fact and that Chapter 88-556 and Chapter 88-557, Laws of Florida, were unconstitutional vel non (R: 1; 623). Argument on this Motion

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[2]"Major Issues" are the specific breakdowns of larger appropriations categories and are displayed in the Summary Statement of Intent.

was never heard, since by Order dated December 29, 1988, the trial judge ruled that the cross-claim "falls" (R: 1705). By this same Order, the trial judge, The Honorable William L. Gary, determined that the Florida Lgislature and the individual Plaintiffs in their official capacity had standing to bring this action; entered Final Summary Judgment in favor of the Legislature; and dismissed the Counterclaim, which requested a declaration of the legal significance of the intent documents - the issue which is at the vortex of the constitutional controversy between the Legislature and the Governor (R: 1705).

In granting the summary judgment, the trial judge determined that there were no disputed issues of fact and that the Legislature was entitled to judgment as a matter of law because the Constitution confers no power on the Governor to veto "portions" of an appropriation and the amounts vetoed do not constitute "specific appropriations" in a general appropriations bill within the meaning of Article III, Section 8 of the Florida Constitution (R: 1705). This was the total explication of the trial court's reasoning. The trial judge enunciated no reason at all for granting the Motion to Dismiss the Counterclaim or the Cross-claim.

From this Order entering final summary judgment, dismissing the Counterclaim, and ruling with respect to the

Cross-claim, the Governor filed a timely appeal to the District Court of Appeal, First District (R: 1709). Because of the magnitude of procedural error in this record, Appellant contested the Legislature's suggestion to certify the case to this Court pursuant to Article V, Section 3(b)(5), Constitution of the State of Florida. While Appellant did not contest the need for immediate resolution, he did express doubts as to whether the procedural error presented by this record constituted issues of great public importance. Moreover, Appellant contended that the exigencies of time would best be served by an immediate resolution of the procedural issues in the District Court. Nonetheless, the case was certified and this Court accepted jurisdiction by Order dated February 1, 1989.

SUMMARY OF ARGUMENT

Appellant contends that the trial court erred in failing to consider the real issue in this case which is the legal significance of the intent documents from which the Governor vetoed specific appropriations. This error is manifest in the trial court's numerous procedural errors. The trial court erroneously entered summary judgment in light of a legally sufficient uncontroverted affirmative defense alleging that the

intent documents were a part of the General Appropriations Act. Moreover, the evidence by way of affidavits from state budget directors and the depositions of the deputy and assistant auditors general proved that the intent documents were considered as appropriations binding on the spending practices of the agencies; facts which a court is impelled to consider in determining the validity of a statutory or constitutional scheme.

The trial court also erred in dismissing with prejudice the Counterclaim by which the Governor sought a declaratory judgment as to the legal significance of the intent documents. The Counterclaim stated a cause of action against the proper parties. The trial court further erred in determining that the Legislature and the Appellees in their official capacity had standaing to maintain this cause of action for declaratory judgment on the validity of the Governor's vetoes. Lastly, the trial court erred in disposing of the Cross-Claim which raised the constitutionality of the implementing and conforming bills.

More importantly, however, the summary judgment was erroneous on the merits in that from the evidence of record in this case, together with the decision in United Faculty v. Board of Regents, 365 So.2d 1073 (Fla. 1st DCA 1979), the intent documents are "an element" of the General Appropriations Act

subject to line-item veto. If the intent documents are not an element of the approrpiations bill subject to veto, then they are a nullity and the practice of requiring adherence to their spending direction is an unconstitutional infringement of the fundamental doctrine of separation of powers.

Appellant lastly argues that Chapters 88-556 and 88-557, Laws of Florida, are unconstitutional in that they contain a multiple of subjects including appropriations in violation of Article III, Sections 6 and 12, Constitution of the State of Florida, and they do not set out the laws which are being amended in violation of Article 6, Constitution of the State of Florida.

POINT I

THE TRIAL COURT'S ERROR IN FAILING TO CONSIDER THE SIGNIFICANCE OF THE INTENT DOCUMENTS IS MANIFEST IN THE NUMEROUS PROCEDURAL ERRORS.

A. THE TRIAL COURT ERRED IN ENTERING SUMMARY JUDGMENT WHEN THE AFFIRMATIVE DEFENSES RAISED GENUINE ISSUES OF MATERIAL FACT.

Appellant's first affirmative defense alleges that the items vetoed by the Governor were specific appropriations within a general appropriations bill subject to the Governor's veto

under Article III, Section 8 of the Florida Constitution. The defense also alleges that these specific appropriations are contained within the intent documents prepared in accordance with statutory directive and constitute identifiable integrated funds which the Legislature has allocated for a specific purpose.

The second affirmative defense alleges that the Amended Complaint should be dismissed for failure to allege that the specific appropriations vetoed by the Governor were binding on the spending practices of the agency since there would be no justiciable controversy if the appropriations were not so binding on the agencies.

Appellees moved to strike the second affirmative defense alleging that it "is not a proper defense to plaintiff's amended complaint" (R: 351). This Motion to Strike was denied (R: 726). Notably, Appellees did not move to strike the first affirmative defense. Moreover, Appellees came forward with no evidence to controvert the allegations in the first affirmative defense. It is axiomatic that in order to be entitled to summary judgment a plaintiff must submit evidence to rebut any affirmative defense raised, Emile v. First National Bank of Miami, 126 So.2d 305 (Fla. 3d DCA 1961); Johnson and Kirley, Inc. v. Citizens National Bank, 338 So.2d 905 (Fla. 3d DCA

1976), stating "where a defendant pleads an affirmative defense and plaintiff does not by affidavit contradict or deny that defense, the plaintiff is not entitled to summary judgment."

Appellant's first affirmative defense alleges that the items vetoed were specific appropriations within a general appropriations bill and as such were subject to the Governor's constitutional veto power. This affirmative defense, if proved, would defeat the allegations of the complaint and is therefore legally sufficient. A-1 Crane Service, Inc. v. RCA Steel and Construction, Inc., 443 So.2d 468 (Fla. 2d DCA 1984). The trial court erred in granting summary judgment in light of an uncontroverted, legally sufficient affirmative defense.

Moreover, Appellant presented uncontroverted evidence that the specific appropriations contained within the intent documents are considered binding on the various governmental agencies by those persons called upon to administer the appropriations acts. In determining whether the items vetoed were specific appropriations, courts should look to the practical operation and effect of the legislative scheme, State ex rel Kurz v. Lee, 163 So. 859, 873 (Fla. 1935):

> And in dealing with finance and taxation measures passed by the Legislature, the courts are impelled to look to the substance of a legislative scheme in its practical operation and effect, rather

> than to the mere form in which it has been contrived and enacted.

When a court is required to interpret legislative action, it should also look to the interpretation placed on the legislative scheme by the officials of state government charged with the duty of interpreting and observing it. State v. Lee, supra; Sullivan v. City of Tampa, 134 So. 211 (Fla. 1931); State ex rel West v. Butler, 69 So. 771 (Fla. 1915); and City of DeLand v. Florida Public Service Commission, 161 So. 735 (Fla. 1935). The affidavits of the budget directors filed in this case show that those who administer the budget consider the allocations in the intent documents to be specific appropriations and were, in fact, told by staff members of the Legislature's appropriations committees that they were to comply with the spending direction as contained in the intent documents (R: 673, et seq.).

Section 216.181, Florida Statutes, requires the preparation of the intent documents and their transmittal to the Executive Office of the Governor, the Comptroller, the Auditor General, and state agencies. Section 216.181, Florida Statutes, also provides that the intent documents shall be considered part of the state operating budget. The First District Court of Appeal in United Faculty of Florida, etc. v. Board of Regents, supra, held the intent documents binding on the various agencies of government, stating:

> The petitioner attempts to avoid that conclusion by asserting that the letter of intent is not binding upon the [the Board of Regents]. That proposition is contradicted by the very terms of F.S. 216.181(1), which mandates its joint preparation by the chairmen of the House and Senate appropriations committees. It is, therefore, by virtue of that statutory provision, an element of the annual appropriations bill.

365 So.2d at 1077 (emphasis supplied).

The judicial recognition that the intent documents are "an element of the annual appropriations bill", together with the affidavits of the various budget directors that the allocation of monies in the intent documents were considered binding on the agencies' spending practices as well as the depositions of the auditors general created a genuine issue of fact so as to preclude the entry of a summary judgment.

B. THE TRIAL COURT ERRED IN DISMISSING THE COUNTERCLAIM WITH PREJUDICE.

Appellant filed a Counterclaim seeking a declaration of the legal significance of the intent documents stating that while the Governor believed that the intent documents were part of the appropriations bill and therefore subject to his line item veto, that because of the allegations in the Amended Complaint a genuine doubt now exists as to the significance of

the intent documents (R: 328). Appellees moved to dismiss the Counterclaim on the grounds that it alleged no controversy between the parties; that the counter-plaintiffs are not proper parties and the Counterclaim fails to join indispensable parties (R: 368). Without specifying any grounds, the trial judge dismissed the Counterclaim with prejudice. Such action is clearly erroneous in light of several well-established principles of law.

The Counterclaim in the instant case clearly alleges a controversy and doubt which should have been resolved by the trial court. The Amended Complaint states that the Governor has acted unconstitutionally by attempting to veto portions of specific appropriations, effectively altering legislative intent by reducing rather than nullifying these allocations.[3] In his Counterclaim, the Governor asserts that the vetoed items, which appear only in the intent documents, are themselves specific appropriations, since they constitute "identifiable, integrated fund[s] which the legislature has allocated for a specified purpose." See Brown v. Firestone, 382 So.2d 654, 668 (Fla. 1980).

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[3]It is clear that the Governor's vetoes did act in a nullifying fashion. The amounts which were the subject of the vetoes were eliminated from the Appropriations Act and are not available for expenditure by the executive. Green v. Rawls, 122 So.2d 10 (Fla. 1960).

These disparate positions plainly present an existing controversy between Appellees and the Governor which centers squarely upon the effect of the intent documents. The controversy was framed and presented to the trial court precisely in the manner directed by the Supreme Court in Brown v. Firestone at 671. Although the issues in Brown were slightly different from those presented here, focusing on whether certain qualifying language in the General Appropriations Act constituted a "specific appropriation", the Court's direction as to how such suits should be structured is no less applicable. In this regard, the Court held:

> Any person, as citizen and taxpayer, may bring suit and have stricken a gubernatorial veto of a qualification or restriction in a general appropriations bill, even if the qualification or restriction is clearly unconstitutional, unless the Governor can successfully demonstrate that the qualification or restriction itself constitutes a specific appropriation within the intendment of article III, section 8(a).

382 So.2d at 671 (emphasis added).

Brown v. Firestone refutes the contentions that the Counterclaim is flawed because the vetoes have already been exercised and there is no future right left to be determined. The vetoes in Brown v. Firestone had also been cast already, yet this did not render the counterclaim there moot or advisory.

Rather, the Court in Brown directed that the proper response to a suit such as this would be, as the Governor's Counterclaim asserts, that the items affected by the challenged vetoes are specific appropriations within the intendment of Article III, Section 8(a), Constitution of the State of Florida.

Furthermore, the issues raised in the Counterclaim are significant to the Governor in the performance of certain of his continuing statutory duties regarding the state budget. The Governor, who serves as the State's chief budget officer pursuant to Section 216.023, Florida Statutes, is directed by Section 216.192(1) to develop an annual plan for quarterly releases of all appropriations. This section further provides that "expenditures shall be authorized only in accordance with legislative authorizations."

Obviously, the effect of the particular allocations in the intent documents, and whether these constitute "legislative authorizations" for "specific appropriations" which are binding upon the Governor, will play a dominant role in the Governor's preparation of the annual release plan. Must this plan be consistent with the legislative authorizations in the intent documents, or must it comply only with the General Appropriations Act? These issues are certainly the appropriate subject of a declaratory judgment action and have been properly raised in the Counterclaim.

Equally as clear, the Counterclaim should not have been dismissed for failure to join an indispensable party. The Comptroller and the Secretary of State are defendants to the Governor's Cross-claim, Count III of which raises the identical issue regarding the intent documents by incorporating each allegation of the Counterclaim. Thus, Appellees' concern expressed in its Motion to Dismiss the Counterclaim that the appropriate government officials are made parties to the suit is completely resolved by the presence of these officials as defendants in the Cross-claim.

This, however, does not mean that the three Counter-claim Defendants, in their capacities as citizens and taxpayers (which, not coincidentally, is how they brought suit, in addition to their official capacities) should be dismissed from the action. Recurring to Brown v. Firestone, it must again be emphasized that the procedure followed by the Governor in bringing the Counterclaim is entirely consistent with the guidelines established by the Supreme Court. In Brown, the Court observed that "any person, as citizen and taxpayer" may bring a suit such as Appellees, in their capacities as citizens and taxpayers, have brought here. 382 So.2d at 671 (emphasis added). However, when a citizen and taxpayer invokes this right, he must recognize the corresponding right of the Governor to maintain, as the Counterclaim alleges, that the questioned

vetoes are legitimately directed at specific appropriations within the scope of Article III, Section 8(a), Constitution of the State of Florida.

In short, the Governor did not randomly select taxpayers as defendants in this suit, they have selected him. With this step taken, the Governor is entitled, under the holding in Brown v. Firestone to respond by counterclaiming that he has acted in complete compliance with the Florida Constitution. Moreover, once the trial court ruled Appellees had standing in their official capacities, which he did in the order appealed, any asserted deficiency in their standing as Counter-Defendants disappeared.

When a claim for declaratory judgment is properly stated, as is this one, the court must enter a declaratory judgment. The test of the sufficiency of a complaint for declaratory judgment is not dependent on whether the trial court agrees with the plaintiff's theory, but whether he is entitled to a declaration at all. Rosenhouse v. 1950 Spring Term Grand Jury, 56 So.2d 445, 448 (Fla. 1952); Verdecia v. American Risk Assurance Co., 494 So.2d 294 (Fla. 3d DCA 1986); Talcott v. Central Bank and Trust Co., 220 So.2d 411, 412 (Fla. 3d DCA 1969). Dismissal of a declaratory judgment action is invariably reversed when an order of dismissal makes an "ambiguous and

unsatisfactory determination" which "operates to leave undecided, rather than to resolve the questions of doubt. . . ." Hildebrandt v. Department of Natural Resources, 313 So.2d 73, 75 (Fla. 3d DCA 1975); Dynamic Cablevision of Florida, Inc. v. Lennar Corp., 434 So.2d 27 (Fla. 3d DCA 1983); see May v. Holley, 59 So.2d 636 (Fla. 1952).

Moreover, the trial court erred when it dismissed the Governor's counterclaim without stating the grounds for the dismissal. This requirement is based upon the Florida courts' recognition that "the parties have a right to know the reasons which motivated the action of the courts." May v. Holley, supra; Dynamic Cablevision of Florida, Inc. v. Lennar Corp., supra; Talcott v. Central Bank and Trust, supra.

To compound its errors, the trial court dismissed the counterclaim "with prejudice." Although the grounds for this "dismissal with prejudice" were not stated, numerous decisions by Florida's appellate courts indicate the such a dismissal is inappropriate. For example, in Bryant v. Gray, 70 So.2d 581, 585 (Fla. 1954), even though the action failed to satisfy the primary jurisdictional requirements for declaratory relief, Florida's Supreme Court dismissed the action explicitly "without prejudice." Similarly, in Allstate Insurance Co. v. Anderson, 360 So.2d 473, 474 (Fla. 3d DCA 1978), the appellate court held

that although the trial court correctly dismissed the complaint for failure to state a cause of action, the trial court "should have done so without prejudice to the plaintiff." Another appellate court held that although failure to join an indispensable party may be grounds for dismissal, such a dismissal should be without prejudice. City of Hallandale v. Gulfstream Park Racing Association, Inc., 440 So.2d 1328, 1329 (Fla. 4th DCA 1983).

A well-established policy underlies the appellate courts' consistent reversal of orders of dismissal with prejudice, particularly where the grounds are not stated. As the court in Sabema stated: "Florida courts have ruled many times that leave to amend shall be freely and liberally granted when justice so requires." Sabema v. Sunaid Food Products, Inc., 309 So.2d 620, 621 (Fla. 3d DCA 1975). Only in the most extreme circumstances will an appellate court uphold a dismissal with prejudice. For example, in Smith v. Jacksonville Terminal Employees Federal Credit Union, 193 So.2d 436, 437 (Fla. 1st DCA 1967), the dismissal with prejudice was upheld because the plaintiff had amended his complaint three times, with all four versions having the same defect: failure to allege a justiciable issue.

In Bella Isla Construction Co. v. Trust Mortgage, 347 So.2d 649, 653 (Fla. 3d DCA 1977), the court stated that "the interests of justice would best be served by allowing the plaintiff to further amend the complaint" to elaborate on the facts alleged; therefore, the trial court erred in dismissing the declaratory judgment action with prejudice and without leave to amend. Can there be the slightest doubt that the "interests of justice" compel, much less require, that the Governor be given a fair opportunity, by amendment, to have declared his official rights and responsibilities in this controversy with the Legislature, which is of constitutional dimensions?

C. THE TRIAL COURT ERRED IN DETERMINING THAT THE LEGISLATURE AND THE INDIVIDUAL PLANTIFFS IN THEIR OFFICIAL CAPACITY HAD STANDING TO BRING THIS ACTION.

The Florida Legislature as an entity and the named individuals in their official capacity should have been dismissed as parties. While it is clear that as ordinary citizens and taxpayers the individual-named Appellees have standing to prosecute this action, the Florida Legislature and the individuals in their official capacity have no such standing. Department of Education v. Lewis, 416 So.2d 455 (Fla. 1982); Jones v. Department of Revenue, 523 So.2d 1211 (Fla. 1st DCA 1988).

Neither the Florida Legislature as an entity nor the Appellees in their official capacity can allege any special injury. It is only the citizens and taxpayers of Florida who can allege an injury caused by a gubernatorial veto. Brown v. Firestone. The taxing and spending power of this State reposes in its citizens through its elected representatives. Consequently, it is the taxpayers and citizens of this State who have the standing to attack taxing and spending decisions on the grounds that they exceed constitutionally imposed standards. Jones v. Department of Revenue, supra. The citizens of this State have not delegated the right to bring suit on such matters in their behalf to the Florida Legislature.

D. THE TRIAL COURT ERRED IN RULING THAT THE CROSS-CLAIM "FALLS".

At the motion hearing conducted on December 22, 1988, the trial court heard argument on Cross-Defendants', Jim Smith's and Gerald Lewis', written motions to abate response to the Cross-complaint and on their ore tenus motion to dismiss the Cross-complaint (R: 1820). In its final summary judgment and related orders, however, the trial court did not grant or deny either type of relief; instead, the Court ruled:

> By reason of the foregoing judgment and orders with respect to the Amended Complaint and Counterclaim, Governor

> Martinez' Cross Claim falls and Cross-defendants' motions responding to the Cross-claim are moot. (emphasis supplied)

(R: 1705). It is apparent from this Order that the trial judge did not rule upon Cross-defendants' motions to abate and dismiss, but rather found no necessity for such a ruling. The legal significance of a "fallen" claim is unknown to Appellant. Nevertheless, there can be no doubt that the Court regarded the issues raised in the Cross-complaint to be so integrally intertwined with the main action and Counterclaim that his disposition of those issues effectively rendered any decision on the Cross-claim unnecessary.

This ruling is absolutely erroneous as to Counts I and II of the Cross-complaint.[4] These counts challenged the constitutionality of Chapter 88-556, Laws of Florida, entitled "An act relating to implementing the fiscal year 1988-1989 General Appppropriations Act" (the "implementing bill"), and Chapter 88-557, Laws of Florida, entitled "An act relating to conforming statutes to the General Appropriations Act" (the "conforming bill"). While the issues raised in these counts are

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[4]Count III of the Cross-complaint incorporated by reference the Counterclaim that was expressly dismissed with prejudice in the summary judgment. The propriety of the dismissal of the Counterclaim is addressed at length at pages 16 - 23, infra.

logically connected to the main claim and the Counterclaim because the entire legislative appropriations process was called into question, they were also capable of being decided without regard to the merits of the Amended Complaint and Counterclaim. Although the cross-claims might have "fallen" in the view of the Court as a result of the summary judgment and dismissal of the Counterclaim, the constitutionality vel non of the above-referenced laws is a live issue that requires expeditious resolution, and, thus, should have been addressed by the Court on its merits. North Miami General Hospital, Inc. v. Air Products and Chemicals, 216 So.2d 793 (Fla. 3d DCA 1968).

In sum, it appears from the magnitude of these procedural errors that on his way to an expeditious resolution, the trial judge refused to consider the real issue in this case. In order to resolve the issue of the validity of the vetoes, it is necessary to determine whether the items vetoed were specific appropriations within the meaning of Article III, Section 8 of the Florida Constitution. The trial judge decided only the narrowest of issues and refused to hear Appellant's defenses or claims, thereby disregarding the Governor's right to have them adjudicated. These procedural errors require that this case be promptly reversed and remanded to the trial court for further proceedings consistent with law and this Court's order.

The entry of the summary judgment was also erroneous on the merits because Appellant's defenses were proven by the affidavits and depositions on file. Furthermore, if this Court chooses due to the exigencies of time to address the merits, the record is sufficient to decide the Counterclaim and Cross-claim. Consequently, Appellant has addressed the remainder of the brief to the merits of the controversy.

POINT II

EITHER THE INTENT DOCUMENTS ARE A PART OF THE GENERAL APPROPRIATIONS BILL SUBJECT TO VETO OR THE LEGISLATIVE ACTION IN MAKING BINDING SPECIFIC SPENDING DIRECTIONS OUTSIDE THE PARAMETERS OF THE APPROPRIATIONS BILL VIOLATES THE FUNDAMENTAL CONCEPT OF SEPARATION OF POWERS AND THEREFORE THE INTENT DOCUMENTS ARE A NULLITY.

A. THE TRIAL COURT ERRED IN ENTERING SUMMARY JUDGMENT IN FAVOR OF THE APPELLEES ON THE MERITS.

This Court in Brown v. Firestone, supra, defined a "specific appropriation" as "an identifiable, integrated fund which the Legislature has allocated for a specific purpose." Brown v. Firestone, at 668. In so defining the term, this Court also recognized that "it is necessarily a fluid concept which to some extent will vary as the contours of a general

appropriations bill change". Id. In Brown, the Court was addressing qualifications and restrictions to "specific appropriations" in the General Appropriations Act and held that a specific appropriation is the smallest identifiable sum to which a qualification or restriction is logically related. The Court ruled that if a qualification or restriction includes the setting aside of an identifiable sum of money, that fund will be considered a specific appropration and subject to the Governor's veto.

This case is the next chapter in the Legislature's continuing struggle to develop an appropriations process immune from the Governor's veto power. The Legislature has developed both a formal and informal process which provides that the appropriation bill contain only large categories of appropriations which are broken down into smaller, identifiable sums allocated for a specific purpose in the intent documents. As demonstrated by this lawsuit, the Legislature asserts that these allocations in the intent douments are beyond the veto power, but as shown by the affidavits of record, the Legislature maintains they are nonetheless binding on the spending practices of the executive branch.

The Legislature's formal process for requiring adherence to the spending directions in the intent documents is

set out in Section 216.181, Florida Statutes, and provides in subsection (1) that after the enactment of the appropriations bill, "the chairmen of the legislative appropriations committees shall jointly transmit a statement of intent . . . to the Executive Office of the Governor, the Comptroller, the Auditor General and each state agency." Section 216.181(2), Florida Statutes, provides that if the chairmen of the legislative appropriations committees believe that the General Appropriations Act has been violated, they may object in writing to the Governor. If the Governor does not agree that the Act has been violated, the administration commission shall determine whether the Act has been violated and instruct the agency. The law specifically states that in making that determination the commission "shall also consider the statement of intent." Finally, Section 216.181(3) provides that "The General Appropriations Act and supporting Statement of Intent and any other acts containing appropriations shall be considered the original approved operating budgets" (emphasis added).

The affidavits demonstrate the practical functioning of the appropriations process. A good illustration is set out in the affidavit of Robert Lankford, the Budget Director for the Department of Commerce (R: 697). The affidavit shows that the General Appropriations Act appropriates $1,050,000 to be used for "economic development projects". The Department of

Commerce, however, is not free to spend that money on the economic development projects it chooses, but rather is directed by the intent documents, in particularly by the "Major Issues" in the Summary Statement of Intent, to spend that money on three distinct projects (City of Miami motor sporting event, Superbowl promotion, and space enterprise study) totalling $1,050,000. Mr. Lankford also states that he has been instructed by the staff of the legislative appropriations committees that the agency must spend its appropriated funds in accordance with the intent documents and has been requested by the Comptroller's office to support specific dispursement requests by reference to the intent documents.

It is apparent from the record facts in this case that rather than set out identifiable appropriations in the Appropriations Act, the Legislature has chosen to conceal its real appropriations in the intent documents. The Governor, rather than acquiesce in this unconstitutional practice, chose to veto the "identifiable fund which the Legislature had allocated for a specific purpose", which fund was contained in the intent documents. The formal statutory scheme outlined above makes it clear that the intent documents are a part of the General Appropriations Act and therefore subject to the veto. See United Faculty v. Board of Regents, supra, wherein the Court held that the intent documents were by virtue of Section

216.181, Florida Statutes, "an element of the annual appropriations bill." Consequently, the Governor correctly exercised his veto power pursuant to Article III, Section 8 of the Constitution of the State of Florida.

B. ASSUMING ARGUENDO THAT THE TRIAL COURT CORRECTLY RULED THAT THE VETOES WERE INVALID, THE COURT ERRED IN REFUSING TO DECLARE THAT THE INTENT DOCUMENTS WERE NOT BINDING ON THE EXECUTIVE.

It is manifest from the evidence now of record in this case that the Legislature intends for the directions contained in the intent documents to be binding on the spending practices of the executive branch of government. If the identifiable funds set out in the intent documents are not specific appropriations contained within the General Appropriations Act, however, then the practice of requiring the agency to be bound by the allocations in the intent documents is an unconstitutional encroachment on executive functions by the legislative branch of government.

The separation of governmental power into three co-equal branches is the most basic concept embodied in the Constitutions of the United States and all fifty states. James Madison, writing in The Federalist No. 47, set forth the

rationale for requiring that the legislative, executive and judicial departments should be separate and distinct:

> The reasons on which Montesquieu grounds his maxim are a further demonstration of his meaning. 'When the legislative and executive powers are united in the same person or body,' says he, 'there can be no liberty, because apprehensions may arise lest the same monarch or senate should enact tyrannical laws to execute them in a tyrannical manner.'

Both the United States Supreme Court and this Court have been called upon to insure adherence to this most fundamental principle. In Hampton and Company v. United States, 276 U.S. 394, 48 S.Ct. 348, 72 L.Ed. 624 (1928), the Supreme Court stated that it is a breach of the national fundamental law if Congress "attempts to invest itself or its members with either executive power or judicial power." See also McCray v. United States, 195 U.S. 27 (1904); and Buckley v. Valeo, 424 U.S. 936 (1976).

The United States Supreme Court in Springer v. Government of the Philippine Islands, 48 S.Ct. 480 (1928), was presented with the question of the constitutionality of a statutory scheme establishing a national coal company and a national bank for the Philippine Islands and providing for the management of those companies. The Court stated:

> Legislative power, as distinguished from executive power, is the authority to make laws, but not to enforce them or appoint the agents charged with the duty of such enforcement. The latter are executive functions.
>
> * * *
>
> The property is owned by the government, and the government in dealing with it, whether in its quasi sovereign or its proprietary capacity, nevertheless acts in its governmental capacity. There is nothing in the Organic Act, or in the nature of the legislative power conferred by it, to suggest that the Legislature in acting in respect of the proprietary rights of the government may disregard the limitation that it must exercise legislative and not executive functions. It must deal with the property of the government by making rules, and not by executing them.

In the instant case, the Legislature appropriates the money to the executive branch in the General Appropriations Act. That is its sole proper legislative function regarding appropriations. The Legislature in this State, however, has now arrogated unto itself the <u>management</u> of those appropriations beyond the enactment of the General Appropriations Act. That management of funds once appropriated is an executive function. The Legislature can choose to set forth the spending directives now placed in the intent document in the General Appropriations Act and the Governor can either veto or be bound by them. When the Legislature, however, chooses to make broad

categories of appropriations to the executive, it cannot then attempt to manage and direct the expenditure of those appropriated funds through the guise of "intent" documents. It is the function of the Legislature to set policy. It may articulate that policy in broad or specific terms, but once it has spoken through legislation (Appropriations Act), then it is for the executive to manage and administer the policy enunciated by that legislation.

If the intent documents are an "element of the Appropriations Act" the vetoes in the instant case are valid. If the specific appropriations contained only in the intent documents are not a part of the Appropriations Act subject to veto, the practice of requiring adherence to them is unconstitutional and the intent documents are a nullity. If the trial judge was correct in his ruling that the vetoes were invalid, then inherent in that ruling was the conclusion that the intent documents are not binding on the executive in more specifically directing spending of the sums appropriated in the Appropriations Act. He should have so declared.

POINT III

CHAPTERS 88-556 AND 88-557, LAWS OF FLORIDA, ARE UNCONSTITUTIONAL.

A. CHAPTERS 88-556 AND 88-557, LAWS OF FLORIDA, WERE ENACTED IN VIOLATION OF ARTICLE III, SECTIONS 6 AND 12, FLORIDA CONSTITUTION.

The integrity of the democratic process is guaranteed through the system of checks and balances that defines and delimits the authority of each branch of government with respect to the others. As noted by the Florida Supreme Court:

> The dynamics of political power do not work in a vacuum. The scope of authority of each branch of government is to a large extent shaped and given meaning by the grant of and limitation upon the power of the coordinate branches.

Brown v. Firestone, 382 So.2d 654, 663 (Fla. 1980).

The integrity of the legislative process and the proper balance between the executive and legislative powers is ensured, in large measure, through the interaction of three constitutional provisions governing the passage of legislation: Article III, Sections 6 and 12 (the "single subject" provisions) and Section 8, Florida Constitution. Section 6 provides, in pertinent part, "[e]very law shall embrace but one subject and

matter properly connected therewith". Similarly, Section 12 mandates that "[l]aws making appropriations for salaries of public officers and other current expenses of the state shall contain provisions on no other subject . . . ." Finally, Section 8 concerns the executive veto power and provides that "[i]n all cases except general appropriations bills, the veto shall extend to the entire bill. The governor may veto any specific appropriation in a general appropriation bill. . . ."

These several provisions were placed in the Constitution primarily to prevent "logrolling". The Court in Green v. Rawls, supra, explained logrolling as follows:

> a practice under which the legislature could include in a single act matters important to the people and desired by the Governor and other matters opposed by the Governor or harmful to the welfare of the state, with the result that in order to obtain the constructive or desired matter the Governor had to accept the unwanted portion. The veto power of the chief executive was thereby severely limited if not destroyed and one of the intended checks on the authority of the legislature was able to be negated in practice.

"Logrolling" also undermines the democratic process within the Legislature. First, in a general substantive bill, when various unrelated measures are lumped together, the effect may be to secure passage of provisions which, if considered individually, would never garner majority support. In this way

a legislator may be forced to vote for measures that he does not favor in order to pass one he does support. Department of Education v. Lewis, 416 So.2d 455 (Fla. 1982); State v. Lee, 356 So.2d 276 (Fla. 1978); Colonial Investment Company v. Nolan, 100 Fla. 1349, 131 So. 178 (Fla. 1930); Williams v. State, 459 So.2d 319 (Fla. 5th DCA 1984). Indeed, it is conceivable that each subject in a multifarious bill may lack majority support individually, but, when aggregated, the multiple subjects create a passable law. Similarly, in the context of an appropriations bill, legislators should not be put to a choice of adopting substantive measures or refusing to appropriate the funds necessary for the conduct of government. Amos v. Moseley, 77 So. 619 (Fla. 1917).

> It is manifest that the Constitution considered this matter of appropriations laws so important that it required they should be freed from all log rolling, . . . that the public could rest assured that when an appropriation bill was up for consideration in the Legislature nothing would be considered but the appropriations, and that this important matter should not be prejudiced by the injection into the appropriation bill of any other matters, regardless of their inherent merits or demerits.

Lee v. Dowda, 19 So.2d 570, 571 (Fla. 1944).

It is clear from the foregoing that the three constitutional provisions cited above are integral components of the system of checks and balances and are aimed at minimizing the potential for logrolling legislation. Article III, Section 12 ensures that lawmakers are not faced with the dilemma of either voting for objectionable substantive measures appended to an appropriations bill or bringing the daily operations of government to a grinding halt for lack of funding. Next, the executive line-item veto power provided in Section 8 exculpates the governor from the dilemma of making the draconian choice of abrogating his constitutional responsibility by permitting repugnant legislation to become the law of the state or, once again, paralyzing government operations. Sections 8 and 12, therefore, work together to ensure that neither the lawmakers nor the executive is coerced into approving measures simply to prevent the wheels of government from grinding to a halt.

Article III, Section 6, proscibing the inclusion of multiple subjects in substantive legislation, works in tandem with these provisions. "Logrolling" persists even in substantive legislation where legislators may be faced with a choice of approving a bill because it contains salutary measures, despite the fact that it may also encompass unpalatable ones. Since the executive veto power for substantive legislation extends to the entire law, the executive

could be put to the choice of leaving a bill intact or vetoing a wide range of substantive measures in one fell swoop. The single subject provision of Section 6 operates to guarantee that legislative enactments will be narrowly drawn so that an executive veto will only have a limited impact. See Thompson v. Graham, 481 So.2d 1212 (Fla. 1986) (Erlich, J. dissenting).

Chapters 88-556 and 88-557, Laws of Florida, contain a plethora of subjects and make substantial appropriations. The implementing bill contains 32 sections which relate to a multitude of subjects including, without limitation, (a) grants of authority unrelated to the General Appropriations Act, such as the grant of rulemaking authority contained in Section 7; (b) imposition of specific requirements on a variety of administrative agencies, such as reporting requirements in Section 11; (c) creation of new positions, as in Section 27; and (d) appropriations of money, such as contained in Sections 12 and 22.

Even more eggregious is Chapter 88-557, which purports to conform various substantive statutes to the provisions of the General Appropriations Act. However, the bill contains 64 sections which relate to myriad subjects and amend numerous provisions of the Florida Statutes. In addition, the conforming bill contains numerous specific appropriations that would

otherwise not conform to the substantive provisions of the statutes relating to the funding or allocation of state funds. These appropriations, which should properly be confined to the General Appropriations Act, are for the benefit of special interest projects which were authorized by previous appropriations bills, but for which, for one reason or another, the funds were not spent. The conforming bill reauthorizes the spending of these funds.

By placing these appropriations, which often appear in the form of an extension or forgiveness of repayment responsibilities, in a general substantive bill, the Legislature has avoided the well-settled restriction that the appropriations act cannot amend substantive law. Moreover, and even more critical to the maintenance of the balance of power that is so crucial to effective budget control, by placing these appropriations in a general law, the Legislature has also attempted to avoid the line-item veto. This is impermissible, for

> [w]hile the Court should be slow to restrict the legislative judgment in making appropriations, they should not permit the circumventing by the Legislature of the proper powers of the Governor, including his power of veto.

In re Advisory Opinion to the Governor, 239 So.2d 1, 9 (Fla. 1970) (emphasis in original). Permitting this piece of omnibus

legislation to pass constitutional muster will effectively eviscerate the executive veto power and frustrate the system of checks and balances that is central to representative government.

Both the implementing and conforming bill contain a multitude of provisions concerning a broad range of subjects. Such additions and changes demand the full attention of the Legislature and none should be passed absent an opportunity for careful, public deliberation regarding the impacts and policy rationales supporting each proposed law. Indeed, these laws represent precisely the classic logrolling situation that the single subject provisions were intended to prevent.

An appropriations bill may not amend or change existing law on subjects other than appropriations. Brown v. Firestone, 382 So.2d at 664. The Legislature must not be invited to avoid this constitutional injunction through the simple expedient of excising all appropriations containing such amendments or changes from the general appropriations act and grouping them in a miscellaneous "conforming" or "implementing" bill. Such a subterfuge effectively prevents the governor from exercising his line-item veto power, since the appropriations are contained in a general bill, and forces him either to approve the law or to

destroy a vast array of substantive law, some of which might be beneficial to the state, through his veto power.

The test of whether a law complies with the general single subject provision of the constitution is to determine whether the provisions contained within the challenged bill are fairly and naturally germane to the subject of the act. State v. Canova, 94 So.2d 181 (Fla. 1957). As noted by the Florida Supreme Court, "[t]he test to determine whether legislation meets the single-subject requirement is based on common sense." Smith v. Department of Insurance, 507 So.2d 1080, 1087 (Fla. 1987). Common sense dictates that both Chapter 88-556 and Chapter 88-557 violate this provision. There is simply no logical or factual connection between, for example, those provisions authorizing the Department of Health and Rehabilitative Services to promulgate juvenile justice rules (Section 7) and the imposition of reporting requirements on the Division of Administrative Hearings (Section 11) in the implementing bill or between a measure continuing the operation of a day care center in a state office building (Section 28) and the reallocation of appropriation amount to various state university projects (Section 56) in the conforming bill. In short, "[t]here is nothing in common between the two." Colonial Investment Co. v. Nolan, 100 Fla. at 1349, 131 So. at 181. The multifarious provisions of Chapters 88-556 and 88-557, Laws of

Florida, have no central subject and are not fairly and naturally germane to any specific subject, nor do they all implement provisions of the General Appropriations Act. Therefore, these bills are unconstitutional and should be declared void in their entirety.

B. CHAPTER 88-557, LAWS OF FLORIDA, IS UNCONSTITUTIONAL BECAUSE IT FAILS TO SET OUT IN FULL THE AMENDMENTS MADE TO SECTIONS OF FLORIDA STATUTES.

Article III, Section 6 of the Florida Constitution mandates that "[l]aws to revise or amend shall set out in full the revised or amended act, section, subsection or paragraph of a subsection." The purpose of this provision is to prevent the enactment of amendatory measures in such a way as to cause the lawmakers to misapprehend their effect. Lipe v. City of Miami, 141 So.2d 738 (Fla. 1962). In sum,

> if the amendatory enactment is not a complete, coherent and intelligible act, or if it necessitates separate research and analysis of the statute which is being amended, it does not meet the [constitutional] requirements . . . .

Auto Owners Insurance Co. v. Hillsborough County Aviation Authority, 153 So.2d 722, 725 (Fla. 1963); see also Jackson v. City of Jacksonville, 225 So.2d 497 (Fla. 1969); Deltona Corp.

v. Florida Public Service Commission, 220 So.2d 905 (Fla. 1969); Central and Southern Florida Flood Control District v. Okeelanta Sugar Refinery, Inc., 168 So.2d 537 (Fla. 1964).

The conforming bill amends, qualifies and revises numerous statutory sections by referring only to the statutory section or subsection numbers and without setting out in full the revised or amended section, subsection or paragraph of a subsection. For example, Section 32 provides:

> Notwithstanding any other provisions of law to the contrary, the amendments to ss. 228.041, 236.012, and 236.02, Florida Statutes, relating to extension of the school day for grades 9-12, which were enacted by Sections 14, 15, and 16 of Chapter 83-327, Laws of Florida; ss. 228.085, 236.091, and 236.092, Florida Statutes, relating to mathematics, science, and computer education; and ss. 230.2319, and 232.301, Florida Statutes, relating to Florida Progress in Middle Childhood Education Program and to model programs for the prevention of student failures and dropouts, enacted by Sections 83 and 87 of Chapter 84-336, Laws of Florida, respectively, may be implemented only to the extent specifically provided for and funded in the General Appropriations Act.

The effect and import of these amendments may not be ascertained from the text of the bill. The amendments are not complete and intelligible in themselves without reference to the acts they purport to amend. Therefore, this revision and amendment by

referring only to the section numbers renders Chapter 88-557 in violation of Article III, Section 6, Florida Constitution, and the bill should be declared unconstitutional.

The issue central to the cross-claim which the trial court failed to address is the integrity of the system of checks and balances essential to representative government. If the two laws challenged in this proceeding be permitted to stand, it will be a message to the Legislature that it need only pass two bills in a given legislative session, an appropriations act, and an omnibus measure denominated an implementing or conforming bill containing the substantive measures as well as any appropriations that the lawmakers decided should not be subject to the executive line-item veto power. Surely it behooves this Court, as the third branch of government, to exercise its authority to curb this potential abuse of the democratic process by striking down the offensive enactments.

CONCLUSION

For the foregoing reasons, Appellant, respectfully requests that (1) this case be reversed and remanded to the trial court for further proceedings; or (2) this Court reverse the ruling of the trial court and declare that the intent documents are an element of the appropriations bill subject to gubernatorial veto; or (3) if this Court rules that the intent documents are not an element of the appropriations bill, that it declare that the intent documents are a nullity and the practice of requiring adherence to them is unconstitutional; and (4) this Court declare Chapters 88-556 and 88-557, Laws of Florida, unconstitutional.

Respectfully submitted,

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