OA 4-6-94

IN THE SUPREME COURT OF FLORIDA

REPUBLICAN PARTY OF FLORIDA,
EXECUTIVE COMMITTEE,
REPUBLICAN PARTY OF FLORIDA,
TOM SLADE, individually, and
TOM SLADE, Chairman, Republican
State Executive Committee of Florida,

Plaintiffs, Appellants,

v. CASE NO: 83,249

JIM SMITH, Secretary of State
State of Florida, TOM GALLAGHER,
Insurance Commissioner/Treasurer,
State of Florida, GERALD LEWIS,
Comptroller, State of Florida, and
DOROTHY W. JOYCE, Director,
Division of Elections,

Defendants, Appellees,

and

BILL JONES, a taxpayer in the State
of Florida and Executive Director
of Common Cause/Florida.

Intervenor, Appellee.
_____/

INITIAL BRIEF OF AMICUS CURIAE, KENNETH L. CONNOR

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STATEMENT OF THE CASE AND OF THE FACTS

Your amicus, Kenneth L. Connor, has announced his candidacy for governor of the State of Florida, is actively campaigning for office, and has raised campaign funds. One of Mr. Connor's campaign themes is reform of the political process, including the financing of campaigns. True political reform must severely limit the opportunity for special interest groups to purchase influence with campaign contributions. Contrary to some candidates, Mr. Connor has announced his willingness to accept the funding and the spending limits provided for in the Florida Election Campaign Financing Act. § 106.30-106.36, Fla. Stat. (1993). He has refused to accept contributions from political action committees and lobbyists. Certain of his contributors have no doubt made contributions on the assumption that their contributions would be matched under the Florida Campaign Financing Act. His candidacy and the expectations of his supporters will be directly effected by the outcome of this action.

In an attempt to limit the influence of political committees and special interest groups and attract candidates from all levels of the economic spectrum, the Florida Campaign Financing Act provides for limited public funding of campaigns for governor and members of the cabinet. Certain contributions from individuals will be matched with public funds by the Election Campaign Trust Fund if the candidate agrees to accept spending and other limits. §§ 106.33 and 106.35, Fla. Stat. (1993). The nature of this case is a challenge by the Republican Party of Florida to the primary

financing mechanism provided for the Election Campaign Trust Fund. Both the fund and its financing mechanism are established in Section 106.32 of the Florida Statutes. Section 106.32(1) calls for funds to be "transferred" to the fund if other funding sources are inadequate to provide the amount necessary to fund campaigns for the office of Governor or members of the cabinet.

The Republican Party of Florida and its director challenge Section 106.32(1) as an invalid appropriation. It is argued that the "transfer" language of Section 106.32(1) does not meet the common law or statutory requirements for appropriations. Neither does it pass constitutional muster according to the Republican Party.

The Circuit Court has upheld the statute against this challenge finding the appropriation to have been valid. An appeal was taken by the Republican Party and its director to the First District Court of Appeal which certified the case to the Florida Supreme Court. (Appellants are hereafter collectively referred to as Appellants or "the Republican Party"). The statute is defended by the Attorney General, the director of Common Cause/Florida as an intervenor, and your amicus, Kenneth L. Connor. A more detailed recitation of the facts, the course of the proceedings, and disposition in the lower tribunal is included in the Initial Brief of Appellant. Your amicus accepts and adopts the statement of the case contained in the Initial Brief of Appellants.

SUMMARY OF ARGUMENT

Section 106.32(1) constitutes a valid appropriation of funds by the Florida Legislature. Its language satisfies the requirements evolved by this court over the last 100 years for appropriations. There are no statutory requirements binding the Legislature to make appropriations using a specific verbal formula. Any requirements arguably applicable are satisfied by the language of Section 106.32(1). The appropriation passes constitutional muster in that it contains the "itemization" sought by the Florida Constitution; however, the requirement for itemization, having been adopted and made effective after the date on which the appropriation was made, is not applicable to this continuing appropriation.

Beginning early in this century the Florida Supreme Court has ruled a number of times that no specific language is required in appropriations. All that is necessary is a clear indication on the Legislature's part that it intends to set aside money for a specific purpose. This requirement is grounded in the people's right to know how their tax dollars are spent and why. Therefore, if the language of the statute is sufficient to convey this information, the language is sufficient to appropriate funds. The language of Section 106.32(1) "transferring" funds to the Election Campaign Trust Fund to be used for the purposes described in the Florida Election Campaign Financing Act places the public on notice of how their tax dollars are being spent. The amount of the expenditure is tied to objectively ascertainable facts, viz. the

amount of campaign contributions to be matched. This is an appropriation.

In 1961 the Legislature defined the term "appropriation" as that term is used in "the appropriations act." Reference is made in Section 216.011(1)(b) to an "amount authorized." This definition cannot bind the 1991 Legislature to a specific method of verbal formula in the appropriations process. The 1961 Legislature simply lacks the power to bind the 1991 Legislature in this manner. Thus, whether the Florida Election Campaign Financing Act makes an "appropriation" as defined by the 1961 Legislature is irrelevant.

The definition of "appropriation" in Section 216.011(1)(b) is not, by its terms, applicable to Section 106.32(1). The definition refers to the "amount authorized in the appropriations act." Section 106.32(1) cannot be said to be "the appropriations act." It is not a general appropriation bill of the type which answers to this description. Rather it is a substantive statute containing an appropriation incidental to its main purpose of reforming the political campaign process.

Nevertheless, the language of Section 106.32(1) satisfies any requirement that it contain "the amount authorized". While no number of dollars is specified in the statute, the amount authorized is the amount required to satisfy the purposes of the statute. This number of dollars will be determined by the amount of contributions required to be matched, an objectively determinable amount. This is all that is required to satisfy the language and policy of Chapter 216.

If Sections 216.011(1)(b) and 106.32(1) conflict, Section 106.32(1) prevails. If two legislative enactments conflict, the later expression of the legislative will prevails. Section 216.011(1)(b) having been enacted in 1961 and Section 106.32(1) having been enacted in 1991, Section 106.32(1) controls in the event of a conflict.

The Florida Constitution, as the result of an amendment effective July 1, 1994, requires "itemization" of certain appropriations, including incidental appropriations contained in substantive legislation. Section 106.32(1) contains such an itemization. It specifically sets forth the purpose for which funds are authorized and provides a mechanism whereby the amount of funding authorized may be determined objectively by reference to readily ascertainable facts. Notwithstanding that the statute does meet any requirement for itemization, this provision of the Florida Constitution is not applicable to the case at hand. Section 106.32(1) is a continuing appropriation made in 1991. The effective date of the constitutional amendment is July 1, 1994. Continuing appropriations made prior to the effective date of the constitutional amendment are not subject to this constitutional requirement.

ARGUMENT

I. Introduction

"No money shall be drawn from the treasury except in pursuance of appropriation made by law." Art. VII, Section 1(c), Fla. Const. This case centers on whether Section 106.32(1) of the Florida Statutes constitutes a valid appropriation of funds for the purpose of funding Florida's Election Campaign Trust Fund. The practical effect of ruling that it does not constitute a valid appropriation of funds will be to gut the Florida Election Campaign Financing Act. § 106.30-106.36, Fla. Stat. (1993). The language of Section 106.32(1) does constitute a valid appropriation of funds. It complies with previously enunciated judicial rules for appropriations, complies with statutory rules for appropriations to the extent they may be applicable, and satisfies the constitutional requirements for appropriations.

II. Section 106.32(1), Fla. Stat. Is an Appropriation As Defined by Florida Case Law

The portion of Section 106.32(1) under attack reads as follows: "If necessary, each year in which a general election is to be held for the election of the Governor and Cabinet, additional funds shall be transferred to the Election Campaign Financing Trust Fund from general revenue in an amount sufficient to fund qualifying candidates pursuant to the provisions of ss. 106.30-106.36." §106.32(1), Fla. Stat. (1993) The Republican Party argues that the quoted language cannot be an appropriation because: a) it does not use the word "appropriation" and b) no amount is specified as appropriated. In fact, the language does constitute an appropriation as that term has been used and defined by the courts since early in this century. Whether the result is changed by the statutory definitions cited by the Republican Party is discussed in Section III.

In State ex rel. Bonsteel v. Allen, 83 Fla. 214, 91 So. 104 (1922) the court considered whether the following language constituted an appropriation: "'All moneys paid into the State Treasury under the provisions of this chapter, except such as shall first be set aside to pay for number plates, postage on same, and the actual clerical work required under the provisions of this chapter, shall be appropriated as follows...'" Id., supra, at 105. It was argued that the funds for number plates, etc. had not been appropriated but only "set aside". The court held as follows:

> The word 'appropriation' is not used in connection with the setting aside of a portion of the money to pay for

> number plates, postage and clerical work, but it is as much an appropriation as if that word were used. It is a setting part (sic) of money formally or officially for a special use or purpose (see Funk and Wagnall's Standard Dictionary), and, where that is done by the Legislature in clear and unequivocal terms, it is an appropriation.

Id., at 105-106. The court went on to note other examples in which "[s]tatutes setting apart or designating public moneys for special governmental purposes have been held to be appropriations, notwithstanding the word 'appropriation' is not used." Id., at 106. Examples cited by the court include State v. Southern Land & Timber Co., 45 Fla. 374, 33 So. 999 (1903) and Amos v. Moseley, 74 Fla. 555, 77 So. 619 (1917). More recently, this court considered whether language "authorizing and providing funding for" a purpose constituted an appropriation. In Thompson v. Graham, 481 So.2d 1212 (Fla. 1985) the court had before it an act which authorized and provided funds for specific public education capital outlay (PECO) projects. The court held that "in the context of this PECO bill, 'authorizing and providing funding' is simply another way of saying 'appropriating....'" Id., at 1214.

This court has clearly and consistently stated over a period of nearly 100 years that no particular words are necessary to constitute an "appropriation." An appropriation is simply a setting aside of funds by the Legislature for a specific state purpose. The purpose of requiring an appropriation is "to prevent the expenditure of public funds already in the treasury, or potentially therein from tax sources provided to raise it, without the consent of the public given by their representatives in formal

legislative acts." State ex rel. Kurz v. Lee, 121 Fla. 360, 163 So. 859, 868 (1935). Section 106.32(1) clearly shows the people's intent, acting through their elected representatives in a formal legislative act, to expend public funds for the purpose of financing campaigns. Nothing more is required to constitute an appropriation.

III. Section 106.32(1), Fla. Stat. Is a Valid Appropriation Satisfying All Applicable Requirements of Statute

Section 106.32(1) constitutes a valid appropriation satisfying all applicable statutory requirements. First, the 1961 Legislature has not bound the 1991 Legislature to appropriate money in any particular manner or to use any certain words in making an appropriation. Neither did the 1961 Legislature have the power to so restrict the 1991 Legislature. Second, the definition of the term "appropriation" in Chapter 216 is not applicable to Section 106.32(1) because Section 106.32(1) is not "the appropriations act". Third, Section 106.32(1) satisfies the definition contained in Chapter 216 because it provides a method to determine the amount of any disbursement. Fourth, to the extent the definition contained in Chapter 216 is inconsistent with the terms of Section 106.32(1), Section 106.32(1) as the later enacted statute controls.

Appellant argues that Section 106.32(1) cannot be an appropriation because it does not satisfy the definition of "appropriation" contained in Section 216.011(1)(b). "Appropriation" as defined in this Section means "a legal authorization to make expenditures for specific purposes within the amounts authorized in the appropriations act." § 216.011(1)(b), Fla. Stat. (1993) Appellant argues that no "amount" is authorized in Section 106.32(1). Furthermore, Section 106.32(1) provides that "[i]f necessary...additional funds shall be transferred to the Election Campaign Financing Trust Fund from general revenue...." Appellants argue that since the Legislature said the funds shall be

transferred rather than appropriated, this section cannot constitute an appropriation.

The definitions in Chapter 216 do not bind the Legislature to appropriate funds in any particular manner or invalidate any act of the Legislature. The structure of Florida's law is hierarchical in that the constitution provides the basis for, and controls the validity of, statutes. Statutes stand on an equal footing with one another. While the constitution may invalidate a statute, one statute does not invalidate another. One statute may control in a given situation but neither statute invalidates the other. "Only limiting provisions of the state constitution...can have restrictive effects on the legislative power to appropriate...prior statutes cannot tie the hands of succeeding legislatures acting within their constitutional powers." Thomas v. Askew, 270 So.2d 707, 709 (Fla. 1973). Therefore whether Section 106.32(1) satisfies the definition of "appropriation" in Chapter 216 adopted by the Legislature in 1961 is irrelevant. The 1961 Legislature simply cannot tie the hands of the 1991 Legislature or require that it follow any particular form in setting aside public funds. If the language of Section 106.32(1) in fact constitutes an "appropriation" as argued above in Section II, any conflict with language in Chapter 216 is meaningless.

The definition of "appropriation" in Section 216.011(1)(b) refers to amounts "authorized in the appropriations act." § 216.011(1)(b), Fla. Stat. (1993). "Appropriations act" is defined as "the authorization of the Legislature, based upon legislative

budgets or based upon legislative findings of necessity for an authorization when no budget is filed, for the expenditure of amounts of money by an agency, the judicial branch, and the legislative branch for stated purposes in the performance of the functions it is authorized by law to perform." § 216.011(1)(c), Fla. Stat. (1993). It seems clear with the reference to the budget process that this definition of "appropriations act" refers to the annual general appropriations act. This interpretation is buttressed by the fact that reference is made to the appropriations act. In other words, it refers to an act making more than one appropriation as the general appropriations act does each year. Finally the reference in Section 216.011(1)(b) to "the appropriations act" implies one particular appropriations act, a definition aptly applied to the general appropriations act.

Section 106.32(1) is not the appropriations act as defined in Chapter 216. Rather, it is a substantive statute containing an appropriation incidental to the substance of the statute. This court in Thompson v. Graham, supra, wrestled with the issue of when a law was an appropriations act. The court recognized the distinction between an appropriations bill and other legislation quoting a decision of the United States Supreme Court:

> 'The term 'appropriation act' obviously would not include an act of general legislation; and a bill proposing such an act is not converted into an appropriation bill simply because it has engrafted upon it a section making an appropriation. An appropriation bill is one the primary and specific aim of which is to make appropriations of money from the public treasury.' Id., at 1214 quoting Bengzon v. Secretary of Justice, 299 U.S. 410, 57 S.Ct. 252, 253, 81 L.Ed. 312 (1937).

This court distinguished such appropriations bills from appropriations which are "merely 'incidental' and necessary solely to implement a substantive law...." Id., at 1215. The primary purpose of Section 106.32(1) is not "to make appropriations of money from the public treasury." This law is the epitome of an appropriation of a sum incidental to the law's primary purpose, viz. campaign reform. The definition of "appropriation" in Chapter 216 is not by its terms applicable to the appropriations before this court, because while Section 106.32(1) is an appropriation, it is not "the appropriations act."[1]

It is a cardinal rule of construction that statutes are to be construed to be in harmony with one another. City of Boca Raton v. Gidman, 440 So.2d 1277, 1282 (Fla. 1983). Thus, if the definition of Chapter 216 is applicable, both statutes should be construed in such a manner as not to conflict. Assuming that an appropriation must be in an "amount" there is no reason that the amount may not be determined according to external factors. In other words, the precise dollar figure in the "amount" may be stated directly in the statute or determined at the time of expenditure by reference to

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[1]It should also be noted that the Florida Constitution acknowledges the difference between "appropriation bills" and "substantive bills containing appropriations." Article III, Section 19(b), Fla. Const. See also Amos v. Moseley, supra, at 624 holding that laws making appropriations for salaries and other court expenses of the state constitute the "general appropriations bill" and distinguishing laws making provisions for the payment of expenses "necessary, proper, incidental, or growing out of the law itself."

ascertainable facts known at that time.[2] Numerous appropriations of this type have been upheld by the courts from time to time. See e.g. Carlton v. Matthews, 103 Fla. 301, 137 So. 815 (1931) and State ex rel. Caldwell v. Lee, 157 Fla. 773, 27 So.2d 84 (1946). The appropriation in Bonsteel v. Allen, supra was for "such as shall first be set aside to pay for number plates..." Id., at 105. No amount was stated, rather the amount of the appropriation was the amount necessary for the stated purpose. The court specifically held the act before it constituted an appropriation even though "[t]he amount that would be needed for the stated expenses could not have been determined in advance. The things for which payments may be made are specifically and definitely stated in the act." Id., at 108. In our case, the thing for which payments may be made, i.e. public financing of political campaigns, is clearly set out. The necessity for the expenditure for the specific purpose set out in the statute will determine the dollars to be disbursed. Providing a mechanism for determining the number of dollars to be disbursed is the provision of an "amount" under Chapter 216.

Another purpose in requiring that an appropriation specify an amount is to permit accountability from the state's fiscal officers. How else will the people (or the Auditor General) know whether warrants were issued for the right amount, or too much, or

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[2]Ascertainment of these facts may be viewed as a condition attached to the appropriation. It is well-settled that the Legislature may attach conditions to its appropriations. In re Opinion to the Governor, 239 So.2d 1 (Fla. 1970)

too little? This statute provides an objective measure, the amount of campaign contributions required to be matched under the Florida Election Campaign Financing Act. It is not as if Section 106.32(1) simply authorizes the transfer of funds in any amount determined at the whim of a state bureaucrat. Full accountability is available under the statute as written.

The Republican Party also argues at great length that making appropriations of unspecified amounts is unwise budgetary policy. It attempts to distinguish the cases permitting appropriations without a stated amount by arguing that the fact patterns permitted such appropriations without jeopardizing the overall budget process. The argument seems to be that because the cases involved funding from specific sources, the language under consideration was given a lower level of scrutiny by the court. Unfortunately, the cases themselves do not make such a distinction. The issue before the court was whether the language constituted a valid appropriation. Budgeting policy was not cited in any case as a rationale for determining the language to constitute a valid appropriation. The wisdom of Legislative acts is not to be adjudicated. Rather, the issue is the power of the Legislature to act in the manner it has chosen. The Republican Party's parade of horribles addresses the wisdom of the Legislature's act, not its power to so act.

Appellant also argues that Section 106.32(1) says that funds shall be <u>transferred</u> not <u>appropriated</u>. Therefore, Section 106.32(1) cannot be an appropriation. As argued above in Section

II, the words chosen by the Legislature to set aside and authorize the expenditure of funds are not important. What is important is that the Legislature indicate its intent that funds be spent for a specific purpose. This the Legislature has done.

The effect of the Republican Party's argument that the word "transfer" means no appropriation was made is that the Legislature, intending to fund the Election Campaign Trust Fund, "goofed". Because the word "transfer" was chosen instead of the word "appropriate", the statute is a nullity. The court has addressed this type of argument before:

> It should never be presumed that the Legislature intended to enact purposeless and therefore useless, legislation. Legislators are not children who build block playhouses for the purpose, and with the gleeful anticipation, of knocking them down. It would be the heighth of absurdity to assume that the legislature intentionally prescribed a formula which creates the need for a Special Disability Fund [Election Campaign Trust Fund], and in the next breath deviously destroyed its own handiwork - thus making a mockery of the intended beneficial purpose of the . . . Fund itself.

Sharer v. Hotel Corporation of America, 144 So.2d 813, 817 (Fla. 1962). But more importantly, on the specific issue of appropriations, this type of formalistic argument has long been rejected by the Florida Supreme Court. There is no substantive difference between a "transfer" and an "appropriation". In either case, the Legislature has indicated its intent to set aside funds for the purpose of financing elections and has made an appropriation.

In addition, the Republican Party argues that Section 106.32(1) is not a proper vehicle to fund a "trust fund."

§215.32(2)(b)1, Fla. Stat. (1993) This argument may prove that the Election Campaign Trust Fund is not a "trust fund" under Chapter 215. It does not go to the power of the Legislature to appropriate money to a trust fund. There is no prohibition in Chapter 215 against the Legislature's supplementing a trust fund with general revenue.

Finally, if there is a conflict between Section 216.011(1)(b) and Section 106.32(1), that conflict should be resolved in favor of the later enacted statute. "The last expression of the legislative will is the law in cases of conflicting provisions in the same statute or in different statutes; the last in point of time or order of arrangement on such statutes prevails." State v. City of Boca Raton, 172 So.2d 230 (Fla. 1965). See also State v. Dunmann, 427 So.2d 166, 168 (Fla. 1983). As Appellant points out, the definitions now found in Chapter 216 were enacted in 1961. Section 106.32(1) was enacted in 1991. Therefore, to the extent there is a conflict, Section 106.32(1) controls.

Section 106.32(1) constitutes a valid appropriation satisfying all applicable statutory requirements. First, the 1961 Legislature could not bind the 1991 Legislature to a specific form or method of making appropriations. Any perceived conflict with the definitions in Chapter 216 is, therefore, irrelevant. Second, the definition of the term "appropriation" in Chapter 216 is not applicable to Section 106.32(1) because Section 106.32(1), while constituting an appropriation, is not "the appropriations act." Third, Section 106.32(1) satisfies any necessity in Section 216.011(1)(b) to state

an "amount" because it provides a means to determine the number of dollars to be disbursed at the time of disbursement. Fourth, to the extent the definition contained in Chapter 216 is inconsistent with the terms of Section 106.32(1), Section 106.32(1) controls because it is the later enacted statute.

IV. Section 106.32(1), Fla. Stat. Is a Constitutionally Valid Appropriation

Section 106.32(1) is a constitutionally valid appropriation. First, Section 106.32(1) satisfies the requirements of Article III, Section 19(b) of the Florida Constitution for "itemization." Second, the effective date of this constitutional provision renders it inapplicable to the statute in question. The constitutional provision in question reads as follows:

> "Additionally, appropriations bills passed by the Legislature shall include an itemization of specific appropriations that exceed one million dollars ($1,000,000) in 1992 dollars. For purposes of this subsection, 'specific appropriation,' 'itemization', and 'major program area' shall be defined by law...Substantive bills containing appropriations shall also be subject to the itemization requirement...This subsection shall be effective July 1, 1994." Article III, § 19(b), Fla. Const.

The argument of the Republican Party is that the requirement for "itemization" is satisfied only when a specific dollar amount appears in the act making the appropriation. This sounds surprisingly like the argument previously considered that a law is not an appropriation unless it specifies an "amount" appropriated. In this case, however, the constitution does not use the phrase "amount" but only refers to an "itemization" of the appropriation.

Itemization may refer to a particular description of the purpose for which the funds are appropriated, the amount of the funds appropriated, or the method by which either will be determined. Until the Legislature acts to define "itemization" we cannot know what is intended. Until the Legislature does act it is not sensible to adopt a construction of the constitution which will

invalidate a number of state statutes. Rather we should attempt to construe the constitution to be in harmony with existing statutes.

Harmonization can be accomplished by recognizing that providing a method in the statute for determining the dollar amount to be expended at the time of disbursement constitutes "itemization" as required by the statute. As pointed out above, this has long been the law of the state of Florida. Numerous appropriations have been made in this manner over the years. There is no reason to think that "itemization" requires anything more than a method to determine the amount of the expenditure. This is provided in Section 106.32(1).

Construing the provision in this manner satisfies the policy behind its adoption. The people need accountability for their tax dollars. Accountability is provided because, by reference to objectively determinable facts, a determination can be made whether expenditures were made for the purpose, and in the amount, authorized by the Legislature.

Whether or not the statute can be reconciled with the constitutional provision in question is irrelevant because the effective date of the constitutional provision "grandfathers" continuing appropriations in effect on July 1, 1994. Generally, the people of Florida will not abrogate vested rights by retroactive constitutional amendments. In some cases this protection against impairment of vested rights is a matter of federal constitutional law. See Folks v. Marion County, 121 Fla. 17, 163 So. 298 (Fla. 1935). But there are other cases in which

the courts refuse to interpret constitutional provisions in such a manner as to give them retroactive effect without regard to federal questions of impairment of contracts. In State ex rel. Judicial Qualifications Commission v. Rose, 286 So.2d 562 (Fla. 1973) this court considered the operation of a constitutional amendment on the tenure of a judge. The judge was elected to a four year term as a Judge of the court of Record on November 3, 1970. He was elevated to the Circuit Court by a constitutional amendment adopted in November 1972. However, the effect of his elevation would have been mandatory retirement because he had then reached the mandatory retirement age of 70 specified in the constitution. In effect, the court "grandfathered" the judge allowing him to serve out his full four year term because he had been elected to a four year term prior to adoption of the amendment.

In our case candidates and their contributors have obtained vested rights in the campaign financing process established in the Florida Election Campaign Financing Act. Political campaigns have begun and contributions collected in reliance on the statutory scheme. The statutory scheme constitutes a valid continuing appropriation.[3] In general continuing appropriations do give rise to vested rights with the Legislature having little leeway to change them, once made. See Chiles v. United Faculty of Florida, 615 So.2d 671 (Fla. 1993). Similarly, constitutional amendments

[3]The only argument against the statute's constituting a valid continuing appropriation is that it is not an appropriation. The Republican Party seems to accept that, if it is an appropriation, it is a continuing appropriation.

should not be lightly construed as defeating continuing appropriations made prior to the effective date of the amendment. The continuing appropriation contained in Section 106.32(1) having been passed prior to the effective date of the constitutional amendment, it is grandfathered in by the effective date of the amendment.

Section 106.31(1) describes the purpose for the expenditure it authorizes and provides a mechanism to determine the amount of the authorization based on level of contributions to the various candidates. It, therefore, contains the "itemization" required by the Florida Constitution. Furthermore, since the statute is a continuing appropriation passed prior to the effective date of the amendment, it need not satisfy the requirements of the amendment. Section 106.32(1) is a constitutionally valid appropriation made for the purpose of funding the public financing of campaigns.

CONCLUSION

Whether the Legislature used the word "transfer" or "appropriate," its intent to set aside funds for the purpose of financing political campaigns is clear; an appropriation was made. Nor should an appropriation be invalidated because the number of dollars set aside does not appear on the face of the statute. So long as the statute provides a method to determine the proper amount to be spent and our fiscal officers can be held accountable for the right number of dollars disbursed, the people's rights have been protected and a valid appropriation made. No enactment of a previous Legislature can change this result. This is especially so in the case of a definition applicable only to general appropriations bills.

Any constitutional requirement for itemization is satisfied by the statute before the court. The purpose for which funding is authorized is specifically itemized. The amount of the funding is determinable by reference to objectively ascertainable facts. Finally, the constitutional provision requiring itemization became effective after the continuing appropriation under consideration by this court was made. The requirement is not applicable to this campaign finance legislation.

The Florida Legislature has begun a reform of politics in this state by striking at the source of the special interests' influence, campaign contributions. Sufficient funds have been appropriated by the Legislature on a continuing basis to finance campaigns for governor and members of the cabinet. In combination

with the limits on campaign spending this will return control of their government to the people of the State of Florida. Given the importance of the legislative purpose, this court should not gut the statute for insubstantial reasons or on the basis of mere verbal formulae.

Dated this 31st day of March, 1993.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to: Richard C. McFarlain, Charles A. Stampelos and Harold R. Mardenborough, McFarlain, Wiley, Cassedy & Jones, P.A., Post Office Box 2174, Tallahassee, Florida 32316-2174; Bill L. Bryant, Katz, Kutter, Haigler, Alderman, Davis, Marks & Bryant, P.A., 106 East College Avenue, Tallahassee, Florida 32301; Gerald B. Curington, Assistant Attorney General, Office of the Attorney General, The Capitol, PL-01, Tallahassee, Florida 32399-1050; and Carol A. Licko and Parker D. Thomson, Thomson, Muraro, Razook & Hart, P.A., Suite 1700, One Southeast Third Street, Miami, Florida 33131, by United States Mail this 31st day of March, 1994.

TIMOTHY J. WARFEL

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