O.a.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,

-vs- 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.

_____/

DEFENDANTS/APPELLEES' ANSWER BRIEF

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

GERALD B. CURINGTON
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 0224170
OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL, PL-01
TALLAHASSEE, FLORIDA 32399-1050
(904) 488-8253

COUNSEL FOR DEFENDANTS/APPELLEES

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STATEMENT OF THE CASE

Appellees accept Appellants' Statement of the Case.

STATEMENT OF THE FACTS

Appellees accept Appellants' Statement of the Facts.

SUMMARY OF THE ARGUMENT

Appellants contend that § 106.32, Fla. Stat., is not a valid appropriation. To the contrary, § 106.32, Fla. Stat., represents the decision of the Florida Legislature, the elected representatives of the citizens of Florida, to expend public funds for election reform. The election reform comes through the partial public financing of certain statewide offices designed to encourage qualified persons to seek elective office and to diminish the influence of special interests. This legislative enactment represents the consent of the public for the expenditure of public funds and fulfills the constitutional mandate that "no money shall be drawn from the treasury except in pursuance of appropriation made by law." Art. VII, § 1(c), Fla. Const.

The lower tribunal correctly found that the Legislature intended to provide funds to the Election Campaign Financing Trust Fund in an amount sufficient to fund qualifying candidates pursuant to §§ 106.30-106.36, Fla. Stat. Having found such

legislative intent, the lower tribunal correctly concluded that § 106.32(1), Fla. Stat., constitutes a valid appropriation made by law.

Moreover, the Act provides a formula which provides the basis for the state comptroller to ascertain the exact amount of money required to meet the funding provisions of the Act. Where an appropriation provides a formula sufficiently definite and certain for determining the exact amount of funds required, then the appropriation meets the balanced budget and appropriation requirements of Art. VII, §§ 1(c) and (d), Fla. Const., and the itemization requirement of Art. III, § 19, Fla. Const.

Aside from the fact that the trial court's ruling is clothed with a presumption of correctness, the lower tribunal's ruling is consistent with and allows the carrying out of the legislatively expressed purpose that the Florida Election Campaign Financing Act (§§ 106.30-106.36, Fla. Stat.) (Act) encourage qualified persons to seek statewide elective office and make candidates less beholden to special interest groups or at least to dispel that (mis)perception. See § 106.31, Fla. Stat. With regard to such legislative purpose, this Court recently found that the Act serves, as intended, the compelling state interest of preserving the integrity of the election process by supporting candidates who are free from the influence of special interest money and, thus, removing corruption and the appearance of corruption from politics. State by Butterworth v. Republican Party, 604 So.2d 477, 480 (Fla. 1992).

Should Appellants be granted their requested relief, the state's compelling interest in limiting the influence of special interest groups in the election process and encouraging qualified persons to run will be frustrated. Florida will no longer have public campaign financing for statewide office, and the will of the people of Florida, as expressed by their elected representatives, will be thwarted should Appellants prevail.

ARGUMENT I

THE "FLORIDA ELECTION CAMPAIGN FINANCING ACT" (§§ 106.30-106.36, FLA. STAT.), AND PARTICULARLY §§ 106.32(1) AND 106.35, FLA. STAT., IS A VALID APPROPRIATION

A

SECTION 106.32(1), FLA. STAT., CONSTITUTES THE CONSENT OF THE PUBLIC TO EXPEND PUBLIC FUNDS GIVEN THROUGH THEIR ELECTED REPRESENTATIVES AND IS, CONSEQUENTLY, A CONSTITUTIONALLY VALID APPROPRIATION MADE BY LAW

The Florida Constitution provides that "no money shall be drawn from the treasury except in pursuance of appropriation made by law." Art. VII, § 1(c), Fla. Const.[1] The purpose of Art. VII, § 1(c), Fla. Const., is to prevent the expenditure of public funds without the consent of the public given through their

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[1] The word "law," as used, means a statute adopted by both houses of the Legislature. **Advisory Opinion to Governor**, 22 So.2d 398, 400 (Fla. 1945). The power to appropriate state funds for a lawful state purpose is legislative and may be exercised only through a duly enacted statute. **State ex rel. Davis v. Green**, 116 So. 66 (Fla. 1928). Note, however, that a constitutional provision may also constitute an appropriation. See **Flack v. Graham**, 453 So.2d 819 (Fla. 1984); **State ex rel. Williams v. Lee**, 164 So. 536 (Fla. 1935).

representatives in formal legislative acts. It secures to the Legislature "the exclusive power of deciding how, when and for what purpose the public funds shall be applied in carrying on the government." State ex rel. Kurz v. Lee, 163 So. 859, 868 (Fla. 1935).

In determining whether § 106.32, Fla. Stat., is an appropriation, this Court must simply determine whether the Legislature, by passing the Act, was "deciding how, when and for what purpose public funds" are to be expended. In looking at whether § 106.32, Fla. Stat., is an appropriation, it is critical to keep in mind the purpose of the constitutional limitations regarding appropriations.

An appropriation, for Florida constitutional purposes, has been defined as the act of setting money apart formally or officially for a special use or purpose by the Legislature in clear and unequivocal terms in a duly enacted law. State ex rel. Bonsteel v. Allen, 91 So. 104 (Fla. 1922). See also State ex rel. Kurz v. Lee, 163 So. 859, 868 (Fla. 1935). An appropriation constitutes "authority to the state treasurer to pay warrants that the comptroller may draw on the state treasury." Kurz, supra, at 872. Every appropriation by the Legislature for a state purpose "creates an authority of law in the official or department to whom or for which such appropriation is made, to incur an obligation on the state's part within the terms of the appropriation made." Kurz, supra, at 872.

No particular form of words is necessary to constitute a valid appropriation. It is not essential to the validity of an appropriation measure that the term appropriation be used. 48 Fla.Jur.2d, State of Florida § 178. State ex rel. Bonsteel v. Allen, 91 So. 104, 105-106 (Fla. 1922) (the language "such [moneys] as shall first be set aside" is an appropriation). State v. Southern Land & Timber Co., 33 So. 999, 1003 (Fla. 1903) (the language "the revenue . . . shall constitute a special fund" is an appropriation). Thompson v. Graham, 481 So.2d 1212, 1214 (Fla. 1986) ("authorizing and providing funding" is simply another way of saying "appropriating"). Appellants suggest that the use of the word "transfer" rather than "appropriate" precludes § 106.32, Fla. Stat., from being an appropriation. These cases clearly show that the word "appropriate" or "appropriation" need not be used to constitute an appropriation. The real issue in the case at bar is whether the Legislature intended to authorize the expenditure of public funds and not what language it used to accomplish that intent.

Consistent with these principles, 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 enacted, especially in dealing with finance and taxation measures passed by the Legislature. Kurz, supra, at 873. This principle properly elevates substance to its rightful place over form. Brown v. Firestone, 382 So.2d 654, 668 (Fla. 1980).

Appellees submit that the Act was clearly intended to appropriate funds for the partial public financing of campaigns for qualifying candidates for governor and the cabinet. When the conference committee report was passed by the House of Representatives, the chairman of the conference committee clearly stated that the bill provided an appropriation from general revenue. He emphasized that in order to make this a productive program that candidates would opt into, it had to guarantee a source of funding to assure candidates that there would be enough money available to finance the required matching dollars.[2]

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[2] A transcript of the audio tapes of the House floor debate on HB 2251 on April 30, 1991, during the conference committee reflects the following exchange:

> (Rep. Goode) But we felt in order to make this a productive program, a viable program that candidates would opt into, we had to have a guaranteed source or there [sic] obviously not going to join into a wagon and sign on the prohibitions that we are allowed to have under that section if theres [sic] not going to be enough finances to carry them through.
>
> (Rep. Stone) O.K., but on that we are guaranteed that if this bill stays the way it is today until the 1994 elections cycle and we have a Governor's race, we have Cabinet races and we have four million dollars in the public financing, but we need ten million or twenty million dollars then we've got to take it out of gr the way this bill's written now.
>
> (Rep. Goode) You are exactly correct, Rep. Stone.

(Exhibit A) (R 254)

In State v. Southern Land & Timber Co., 33 So. 999 (Fla. 1903), this Court, in upholding a tax assessment, found the following language was the equivalent to an appropriation:

> There shall be annually levied and collected upon the assessable property of the state a tax of not more than half a mill, the revenue derived from which assessment and collection shall constitute a special fund to be used for public health purposes of the state.

Id. at 1003 (Emphasis added). This Court reasoned that the Legislature regarded that language as being, *ex propria vigore*, equivalent to an appropriation, and, consequently, it was an appropriation.[3]

Similarly, in State ex rel. Bonsteel v. Allen, 91 So. 104 (Fla. 1922), this Court, in approving the expenditure of public monies, held that the language "such [moneys] as shall first be set aside" was "as much an appropriation as if that word were used." Id. at 105-106.

In these cases, this Court rejected challenges to appropriations, merely because the word "appropriate" was not

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[3] Notably, the challenged legislation did not ascertain or determine the amount of money to be raised by the tax, yet the legislation was upheld. This point will be addressed fully under Argument I, B, dealing with Appellants' challenge based on the lack of a specified "amount" in § 106.32, Fla. Stat.

used, based on constitutional provisions in Florida's 1885 Constitution.[4]

Appellees submit that the language of § 106.32, Fla. Stat., "If necessary . . . additional funds shall be transferred to the Election Campaign Financing Trust Fund from general revenue in an amount sufficient to fund qualifying candidates . . .," is *ex propria vigore* equivalent to an appropriation and is as much an appropriation as if that word were used.

Moreover, the definition of the words "transfer" and "appropriation" for all practical purposes mean the same thing as defined by Webster's Seventh New Collegiate Dictionary.[5] Accordingly, the failure to use the word "appropriation" in § 106.32, Fla. Stat., is not fatal as Appellants argue.[6]

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[4] Those provisions, which are indistinguishable from Florida's 1968 Constitution, required a balanced budget and that no money be drawn from the treasury except in pursuance of appropriation made by law.

[5] Webster's defines "appropriate" as "to set apart for a specific use." It defines "transfer" as "to take over the possession or control of."

[6] The lower tribunal correctly found the use of the word "transferred" to be ambiguous in the context of § 106.32, Fla. Stat. Although Appellees would admit the word has a dictionary definition as Appellants argue (Appellants' Brief, p. 20, n.12), as do all words, it is in the context of the legislative history, the purpose of the Act and its entire context that makes the use of the term "transferred" ambiguous.

Importantly, the office of Defendant Gerald Lewis, Comptroller, who serves as the chief fiscal officer of the state (Art. IV, § 4(d), Fla. Const.), has determined that § 106.32, Fla. Stat., is a legislative appropriation. (R 255-261) (Affidavit of Jana Walling) Appropriations "involves a field in which the Comptroller is conversant and with which he is called on to deal frequently, his judgment should weigh heavily." State v. Lee, 27 So.2d 84 (Fla. 1946). Likewise, a construction of a statute or constitutional provision by a governmental department is of "great persuasive force and efficacy." Amos v. Moseley, 77 So. 619, at 626 (Fla. 1917).[7]

Appellants argue that the Legislature "knew how to appropriate money for the particular purpose, but chose not to do so." (Initial Brief of Appellants (Appellants' Brief), p. 28) To accept Appellants' argument is to accept that the Legislature adopted the Act, defined and recognized the state's compelling interest in election reform, determined the need to provide money

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[7] The **Amos** Court also recognizes that the Florida Constitution allows the Florida Legislature to make continuing appropriations, irrespective of the balanced budget provisions of Art. IX, § 2, Fla. Const. (1885). The constitutional requirement for a balanced budget does not inhibit the Legislature's power to make a continuing appropriation. [now contained in Art. VII, § 1(d), Fla. Const. (1968)]. **Amos**, 77 So. at 626; **Carlton v. Mathews**, 137 So. 815, 837 (Fla. 1931). See also § 216.011(1)(g), Fla. Stat., which defines "continuing appropriation." Appellants overlook the fact that § 216.136(3), Fla. Stat. (revenue estimating conference) and § 216.221, Fla. Stat. (deficit reductions) assure that the budget will be balanced. The requirement of a balanced budget (Art. VII, § 1(d), Fla. Const.), should not be confused with the requirement of the public's consent (Art. VII, § 1(c), Fla. Const.).

to implement the program to serve that interest and then incongruously chose not to appropriate the necessary money. Appellants' position defies reason and presumes the Legislature enacted useless legislation. It should never be presumed that the Legislature enacted useless legislation or that it undertook a meaningless act. See Sharer v. Hotel Corp. of America, 144 So.2d 813, 817 (Fla. 1962). If there was not an appropriation, the Legislature would have undertaken a useless, meaningless act.

Appellees submit that this Court must look to the legislative intent in adopting the Act (a cardinal principle of statutory construction) and must logically conclude that the Legislature intended to provide the funds necessary in "an amount sufficient to fund qualifying candidates" as stated in § 106.32, Fla. Stat. One cannot reasonably look at this language and conclude the Legislature choose to make its own legislation meaningless by not appropriating money to fund qualifying candidates.

As defined by Southern Land & Timber Co., Bonsteel, and Kurz, and as intended by the Legislature and construed by the comptroller, Appellees submit that § 106.32, Fla. Stat., legislatively set money aside for a special purpose (election reform). Thus, it is an appropriation made by law which authorizes the state treasurer to pay warrants that the comptroller may draw on the state treasury. Section 106.32(1),

Fla. Stat., constitutes the consent of the public to expend public funds given through the public's elected representatives and is a valid appropriation which must be upheld by this Court.

B

THE ACT PROVIDES A BASIS FOR ASCERTAINING THE AMOUNT OF FUNDS REQUIRED AND, CONSEQUENTLY, IS SUFFICIENTLY DEFINITE AND CERTAIN TO CONSTITUTE AN APPROPRIATION

An appropriation is statutorily defined as "a legal authorization to make expenditures for specific purposes within the amounts authorized in the appropriations act." § 216.011(1)(b), Fla. Stat. (Emphasis added) Appellants rely heavily on the use of the word "amounts" in this statutory definition. (Appellants' Brief, pp. 15-19) However, Appellees submit that Appellants' reliance is misplaced.

Appellants suggest that § 106.32, Fla. Stat., does not comply with this statutory definition of appropriation and thus § 106.32, Fla. Stat., is invalid. To the contrary, one statute does not render another statute invalid.

It is the duty of the courts to adopt a construction which harmonizes and reconciles statutory provisions. All laws are presumed to be consistent, and courts must favor a construction that reconciles the statutes rather than construe one statute as being meaningless or repealed by implication. Oldham v. Rooks, 361 So.2d 140 (Fla. 1978). See generally, 49 Fla.Jur.2d,

Statutes § 180. Section 106.32, Fla. Stat., can be harmonized and reconciled with § 216.011(1)(b), Fla. Stat.

It is axiomatic that courts must give a statute a construction which will uphold it rather than invalidate it, if there is any reasonable basis for doing so. The courts should construe enactments as to make them conform to the constitution without violating the plain intent of the Legislature. The primary guide to statutory interpretion is to determine the purpose of the Legislature and to carry that intent into effect to the fullest degree. To this principle, all rules of statutory construction are subordinate. The legislative intent is the polestar guiding the courts. This intent must be given effect even though it may appear to contradict the strict letter of the statute. 49 Fla.Jur.2d, Statutes, §§ 113 and 114.

First, Appellees submit that the definition of appropriation in § 216.011(1)(b), Fla. Stat., is limited to appropriations authorized in the general appropriations act and not appropriations which are incidental to substantive legislation. Appellees have been unable to locate any cases interpreting the statutory definitions of "appropriation" or "appropriations act" as used in §§ 216.011(1)(b) and (c), Fla. Stat. Nevertheless, Appellees submit that "the appropriations act" referred to in the statutory definition of "appropriation" refers to the "general appropriations act" as it is generically

known and historically understood in our constitution. See Amos, supra at 623. Consequently, this statutory definition of "appropriation" only applies to "appropriations" authorized in the general appropriations act.[8] It does not apply to the Act because the Act is not a general appropriations act but is simply an appropriation incidental to substantive legislation. This statutory definition does not subplant the constitutional definition of "appropriations," as used in the Florida Constitution and construed by this Court (see Argument I A, supra), when addressing appropriations incidental to substantive legislation[9] such as the Florida Election Campaign Financing Act.

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[8] It is not uncommon for the Legislature to define a single term differently for different statutory purposes. E.g., §§ 120.52(1), 63.032(7), 287.059(1), 161.212(1)(a), 216.011(1)(kk), 255.28(1)(a), Fla. Stat., plus 41 other statutes.

[9] This Court has recognized that substantive bills may include appropriations incidental to the law itself. In **Amos v. Moseley**, 77 So. 619 (Fla. 1917), this Court upheld a substantive bill creating a state tax commission that also appropriated money for the commission's expenses. This Court reasoned that the Act is:

> inaugurating a new governmental policy in the assessment of property taxes, and is a comprehensive scheme embracing the entire state and affecting the taxation of all property in the state. The matter of appropriations for carrying the law into effect is but a small part of the great purpose of the act.

Id. at 626. This Court stated that "there seems to be no reason why an [substantive] act . . . may not, . . . make provision for the payment of expenses necessary, proper, incidental, or growing out of the law itself. . . ." Id. at 624.

As in **Amos**, the Florida Election Campaign Financing Act, § 106.32, et seq., is a comprehensive scheme embracing election campaign reform affecting the entire state and the matter of

The Legislature has never interpreted or understood § 216.011(1)(b), Fla. Stat., to require a sum certain for an appropriation incidental to substantive legislation. The Florida Legislature has repeatedly appropriated money by use of language, such as "sufficient" or in "an amount necessary" without providing a sum certain, i.e., §§ 121.091(4)(g)(2), 107.11, 238.11(2)(a), 123.02(2), 284.03, 25.101, 17.16, 112.05(1), 240.215(4), Fla. Stat. The Legislature's interpretation of its appropriation authority is of "great persuasive force and efficacy." Amos, supra at 626. Consequently, Appellants' reliance on the limited statutory definition of appropriation is misplaced.

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appropriation carrying the law into effect is but a part of the great purpose of election reform. The provision for payment of the expenses necessary, proper and growing out of election reform itself is incidental to the law itself and therefore there is no reason why the Act may not make provision for the payment of such expenses. The Act makes a legal appropriation in the substantive legislation, i.e., §§ 106.30-106.36, Fla. Stat.

It would appear beyond doubt that substantive laws may make provisions for the payment of expenses necessary, proper, incidental or growing out of the law itself. **Amos v. Moseley**, 77 So. 619, 624 (Fla. 1917). Such provisions are not prohibited by the Florida Constitution and have in fact been passed by the Florida Legislature ever since 1887. Id. at 625. The fact that the Florida Legislature has construed the Florida Constitution to permit such provisions is entitled to "very great weight." Id. at 625. Moreover, the recently adopted Art. III, § 19(b), Fla. Const., specifically recognizes that substantive bills may contain appropriations. Consequently, there is a legal distinction between a general appropriations bill and a bill making an appropriation. The public policy reasons for such a distinction are explained in **Amos, supra**, at 624 (i.e., anti-logrolling).

Second, even assuming that the statutory definition of appropriation contained in § 216.011(1)(b), Fla. Stat., applies to appropriations incidental to substantive legislation, the Act provides a basis for ascertaining the "amount" of funds required and consequently is sufficiently definite and certain to meet the statutory definition. Appellees submit that formulas that provide a basis for ascertaining the amount of an appropriation meet the § 216.011(1)(b), Fla. Stat., definition of appropriation.[10] Florida law does not require that the amount be a sum certain as Appellants contend.

In Carlton v. Mathews, 137 So. 815 (Fla. 1931), this Court upheld a legislative enactment that appropriated certain gas tax revenues to the various counties based upon a formula. The challenge to the law contended that the appropriation of the proceeds from the gas tax was not "sufficiently definite and certain" to meet the requirements of the Constitution. In rejecting that challenge, this Court reasoned that the amount of the appropriation could be ascertained by the state comptroller by the formula provided in the law and consequently the appropriation of the funds was "sufficiently definite and certain." Id. at 836-837. This Court held that where the law provided a basis for determining the amount of an appropriation,

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[10] Examples of formula appropriations include: §§ 17.26 and 218.62, Fla. Stat. It is noteworthy that Art. III, § 19, Fla. Const., itself provides a formula for adjusting for inflation the $1,000,000 itemization requirement upon which Appellants rely.

it did not violate Art. IX, § 2 or § 4, Fla. Const. (1885), which required a balanced budget and that no money be drawn from the Treasury except in pursuance of appropriations made by law.[11]

As in Carlton, the amount of the appropriation in the present case is sufficiently definite and certain to meet the requirements of Art. VII, §§ 1(c) and (d), Fla. Const. (1968) because the basis for ascertaining the exact amount appropriated is contained in the law (§§ 106.32-106.36, Fla. Stat.). The exact amount can be determined by the Secretary of State and the Comptroller from §§ 106.32 and 106.35, Fla. Stat., which leave no discretion to the executive Appellees.

In State ex rel. Caldwell v. Lee, 27 So.2d 84 (Fla. 1946), this Court again recognized that substantive bills may not only include an appropriation but also that such an appropriation does not need to state a sum certain. This Court upheld substantive legislation designed to provide necessary buildings to convert from a war to peacetime economy and to relieve postwar unemployment. The legislation appropriated $3,000,000 into a state building fund to accomplish those purposes but also authorized the budget commission to ascertain surpluses in other programs and transfer such sums into the state building fund in order to supplement the $3,000,000. The legislation was challenged on the basis of the "indefiniteness of the amount

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[11] These provisions of the 1885 Constitution are now in Art. VII, § 1(c) and (d) of the 1968 Constitution.

appropriated." In rejecting that challenge, this Court noted that the legislation:

> outlined a general building policy for the triple purposes defined in the Act. . . . The appropriation is limited both by the unneeded balances and by the amounts found to be necessary by architects and engineers to carry out the building program.

Id. at 87. This Court then addressed the impracticability of appropriating a sum certain:

> In a public project the magnitude of this, it would hardly be possible to give a detailed specification for items of expenditure in the authorization with prices fluctuating as they are now. Some discretion must be vested in those who execute large plans for public benefit, and we think ample safeguards have been thrown around this one. So long as it is for a lawful purpose, the Legislature has absolute power over the public purse. The purpose of the expenditure in this case is not challenged; the assault is directed solely at the manner in which it is undertaken.

Id. at 87. This Court upheld the appropriation of "surpluses" even though the amount of the surpluses was unknown at the time of the appropriation.

Similarly, Appellees submit that the Act establishes substantive election reform through partial public financing of the statewide offices of Governor and the Cabinet. The legislation creates the Election Campaign Financing Trust Fund in order to preserve the integrity of the election process by

freeing candidates from the influence of special interest money and removing corruption or the appearance of corruption from politics. Incidental to and growing out of that purpose, the Act appropriates monies to the trust fund derived from certain filing fees and, additionally, provides:

> If necessary, . . . 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 §§ 106.30-106.36, Florida Statutes.

As in Caldwell, the appropriation in § 106.32, Fla. Stat., is being challenged for the indefiniteness of the amount appropriated. This Court should reject such a challenge just as it did in Caldwell. The Act (§§ 106.30-106.36, Fla. Stat.) outlines a general policy (election reform rather than a building program) and appropriates money limited by the number of qualifying candidates and the amount of campaign funds raised and expended.

Also, as in Caldwell, there are practical limitations to appropriating a sum certain since the obligations of the election trust fund can only be determined during the course of the statewide campaigns.[12] Like Caldwell, where it was difficult or impracticable to determine the amount of the building program

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[12] Appellants admit that the amounts required are "unknown until disbursed to the qualifying candidate." (Appellants' Brief, p. 18, n.8)

expenses at the time the legislation was adopted, it was difficult, if not impossible, for the Legislature to determine, at the time the Act was adopted, the specific amount needed to fund the public financing of the campaigns. Nevertheless, the amount required is ultimately determinable by the statutory formula. However, the amount required can only be determined by the election process after the fact of adoption of the legislation.[13] Moreover, the present Act provides no discretion to the executives charged with executing the law to determine the amount, whereas in Caldwell, there was room left for professional discretion (i.e., architects and engineers) to determine the amount of the surplus and thus the amount of the appropriation. Thus, the case at bar offers more safeguards than those present in Caldwell. Consequently, § 106.32, Fla. Stat., provides more justification for upholding the law than existed in Caldwell and must be upheld.[14]

Moreover, in Southern Land & Timber Co. and Bonsteel, supra, the legislation was upheld even though it did not provide a sum certain but merely provided a basis for ascertaining the

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[13] Sections 106.32 and 106.35, Fla. Stat., may be required to fund special elections under Art. IV., § 1(f), Fla. Const., (off the four-year cycle) which makes it even more difficult to project a sum certain. This happened in 1988 when there were special elections for treasurer and secretary of state when a candidate for treasurer received $47,707.

[14] As in **Caldwell**, the purpose of the expenditure is not challenged in this case, and the assault is directed only at the manner in which it is undertaken.

amount. Even more notable, in Flack v. Graham, 453 So.2d 819 (Fla. 1984), this Court found a constitutional appropriation even though there was no amount or formula stated in the constitution. Simply stated, even the statutory definition of appropriations does not require sum certain amounts. The statutory definition simply requires that the amount be determinable pursuant to a statutory basis or formula.

Appellants argue that a sum certain is a better budgeting practice. (Appellants' Brief, pp. 17-19) While Appellees might admit that a sum certain makes for better budgeting in some respects, it is worse in other respects. For example, because the Legislature could not know when it passed the appropriation who would qualify as candidates or how much the candidates might spend, the Legislature, if Appellants' argument was accepted, would be forced to put a sum certain into the trust fund and hope that it was enough. The Legislature would be between Scylla and Charybdis. The Legislature would either run the risk of not appropriating enough money, which would result in qualifying candidates not getting all the dollars they were entitled to under § 106.35 (probably resulting in a challenge to the election), or appropriating too much money and leaving other government needs or services underfunded while a surplus sat idly in the election trust fund.

Appellees submit that their position, as evidenced by legislative practice, properly balances the competing budgeting concerns (accountability and flexibility). Given the fact that the majority of public monies are appropriated through the general appropriations act, there is a sum certain for the majority of state expenditures and thus accountability.[15] The "formula" appropriations of §§ 106.32 and 106.35, Fla. Stat., constitute but a small portion of Florida's $35 billion budget and allow some critical flexibility without compromising a balanced budget.[16]

The Legislature's historically limited use of "formula" appropriations does not create the "Chicken Little" scenario described in Appellants' "no method to the madness" argument. (Appellants' Brief, p. 18) First and foremost, Appellants' "Chicken Little" scenario is merely hyperbole created with hypotheticals (such as "Save the Manatee Program) that have no monetary limits created by any formula and thus are not analagous

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[15] The General Appropriations Act appropriated $31,222,620,942 for Fiscal Year 1992-1993 and $35,233,786,261 for Fiscal Year 1993-1994.

[16] A balanced budget is assured by § 216.136(3) and § 216.221, Fla. Stat. Appellants argue that § 106.32, Fla. Stat., cannot be an appropriation because the Legislature could not consider the 1994 budgetary effect of the "transfer" in 1991. Appellants argue such failure to base an appropriation on legislative budgets or current need violates the plain language of §§ 216.011(1)(b) and (c) and 215.32(2)(a), Fla. Stat. (Appellants' Brief, p. 19) Appellants' logic would make all continuing appropriations invalid as violative of these statutory provisions. Such logic must be rejected in light of this Court's repeated approval of continuing appropriations. **Amos, supra.**

to § 106.32, Fla. Stat., that has formula created limits which leaves no discretion to the Executive Branch of government. Moreover, in light of the budget deficit safeguards of § 216.221, Fla. Stat. (Walling Affidavit, R 255-261), as well as the revenue estimating process of § 216.136(3), Fla. Stat., the treasury would not "inevitably run dry" (Appellants' Brief, p. 18) or result in a "race to the treasury." (Appellants' Brief, p. 18) To the extent Appellants argue that a sum certain amount allows for better budgeting, surely this Court must have been aware of the budgeting implications when it approved "formula" appropriations in its decisions in Bonsteel, Caldwell, etc. Over the 70 or 80 years since this Court's decisions, the Legislature's tempered appropriation practices have not yet resulted in the sky falling. The Legislature has balanced the competing budgetary considerations while maintaining a balanced budget and this court should not substitute its judgment where legislative prerogative is involved.

In light of the above, Appellees submit that the provisions of §§ 106.32-106.36, Fla. Stat., constitute a valid appropriation, including an "amount," as determinable by the statutory formula in § 106.35. The appropriation does not violate Art. VII, §§ 1(c) and (d), Fla. Const. (1968), or the statutory definition of appropriation contained in §§ 216.011(1)(b) and (c), Fla. Stat., and should be upheld.

ARGUMENT II

SECTION 106.32, FLA. STAT., COMPLIES WITH THE ITEMIZATION REQUIREMENT OF ART. III, § 19(b), FLA. CONST.

The Florida Constitution is a limitation on power as distinguished from a grant of power. The Legislature has plenary lawmaking power and may enact any law not forbidden by the Constitution. Those who assert the unconstitutionality of a statute have the burden of showing that beyond all reasonable doubt the statute inevitably conflicts with the Constitution. Neisel v. Moran, 85 So. 346 (Fla. 1920). A statute is not unconstitutional on its face unless it can never be applied constitutionally.

Furthermore, this Court has an obligation to examine the intent of the statutory scheme established by the Legislature in the Act (§§ 106.30-106.36, Fla. Stat.) and to uphold that scheme if constitutionally permissible. See State by Butterworth v. Republican Party, 604 So.2d 477, 481 (Fla. 1992) (Overton, dissenting). "It is not the function of a court to search out ways to strike an act down or to defeat its purpose. The Court's function is to find ways within the terms of the act to carry out the purpose of the legislature." Overman v. State Board of Control, 62 So.2d 696 (Fla. 1952).

The Act cannot be declared invalid beyond a reasonable doubt, as it must, to be unconstitutional. State v. Burch, 545

So.2d 279, 287 (Fla. 4th DCA 1989). There is a strong presumption in favor of the constitutionality of statutes and that all doubt will be resolved in favor of the constitutionality of a statute. Bonvento v. Board of Public Instruction of Palm Beach County, 194 So.2d 605 (Fla. 1967).

With these principles in mind, Appellees first point out that new constitutional provisions are generally prospective in operation. The Florida Constitution itself provides:

> All laws in effect upon the adoption of this revision, to the extent not inconsistent with it, shall remain in force until they expire by their terms or are repealed.

Art XII, § 6(a), Fla. Const. Appellees note that Art. III, § 19(b), Fla. Const., by its very terms becomes effective July 1, 1994. Given the legal presumption of prospective application, Appellees submit that the "itemization" requirement only applies to substantive bills containing appropriations which are adopted after July 1, 1994. The prospective application of Art. III, § 19(b), Fla. Const., effectively grandfathers in existing continuing appropriations, such as § 106.32, Fla. Stat., unless expressly repealed.

Secondly, in considering the effect of constitutional amendments upon existing statutes, the rule is that the statute will continue in effect unless it is completely inconsistent with the plain terms of the Constitution. In re Advisory Opinion to

the Governor, 132 So.2d 163, 169 (Fla. 1961). Appellees note that Art. III, § 19, Fla. Const., does not, on its face, repeal continuing appropriations generally or § 106.32, Fla. Stat., specifically. Notably, Art. III, § 19(f), Fla. Const., specifically provides for terminating all previously created trust funds (with limited exceptions) whereas it does not provide for terminating any existing continuing appropriations.

It is an elementary proposition that repeals by implication are not favored. Enactments will be deemed to be repealed by implication only when no other conclusion can be reached. Miami Water Works Local No. 654 v. City of Miami, 26 So.2d 194 (Fla. 1946). See also Board of Public Instruction v. Polk County, 50 So. 574 (Fla. 1909). Because it can be reasonably concluded that Art. III, § 19 did not repeal § 106.32, Fla. Stat., this Court cannot repeal by implication the continuing appropriation in § 106.32, Fla. Stat.

Appellants must show that there is no way that § 106.32, Fla. Stat., can operate lawfully without conflicting with Art. III, § 19, Fla. Const. If "by any fair course of reasoning the statute can be harmonized or reconciled with the new constitutional provision, then it is the duty of the courts to do so." In re Advisory Opinion to the Governor, 132 So.2d 163, 169 (Fla. 1961).

Moreover, statutes advancing public policy should be given a liberal construction to ensure that the public receives the benefits of the legislation. The legitimacy of the state's compelling interest in this election reform is not in question. State by Butterworth v. Republican Party, 604 So.2d 477 (Fla. 1992). The state's public policy in favor of the partial public financing of qualifying candidates for governor and the cabinet should be liberally construed to ensure that the public receives the intended benefits of such election reform.

Section 106.32, Fla. Stat., is a substantive bill containing an incidental appropriation. It is also a continuing appropriation that continues until repealed. Under the above principles, § 106.32, Fla. Stat., continues in effect unless it cannot be reconciled with Florida's new Constitutional Amendment Art. III, § 19, Fla. Const. Appellees submit that § 106.32, Fla. Stat., can be reconciled with Art. III, § 19, Fla. Const., and where that is possible, it is this Court's duty to do so.

Even assuming arguendo that Art. III, § 19(b), Fla. Const., applies to existing continuing appropriations such as § 106.32, Fla. Stat., Appellees contend that § 106.32, Fla. Stat., meets the requirement for "itemization"[17] because it provides a

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[17] Appellees note that the Legislature must be given a reasonable time to implement new constitutional provisions. **Dade County Classroom Teachers Ass'n v. The Legislature**, 269 So.2d 684 (Fla. 1972). Hopefully, the term "itemization" will be clearly defined by the Legislature between now and July 1, 1994. Meanwhile, the term "itemization" should be interpreted as

legislative formula (basis) for determining the exact amount of the appropriation. The formula provides the accountability or itemization sought by Art. III, § 19, Fla. Const.[18] Thus, it is possible to reconcile § 106.32, Fla. Stat., with Art. III, § 19(b), Fla. Const., and, consequently, it must be upheld.

CONCLUSION

The lower tribunal correctly found that when the Florida Legislature passed § 106.32(1), Fla. Stat., it intended to provide funds to the Election Campaign Financing Trust Fund in an amount sufficient to fund qualifying candidates for Governor and the Cabinet. Section 106.32, Fla. Stat., constitutes the consent of the public to expend public funds given through their elected representatives. Consequently, the lower tribunal correctly concluded that § 106.32(1), Fla. Stat., constitutes a valid appropriation made by law.

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broadly as constitutionally possible to maintain legislative discretion. Until the Legislature defines "itemization," this Court should not narrow the definition to exclude a formula (basis) for determining a sum certain (for the same reasons the term "amount" should be interpreted to include formulas as Appellees contend in Argument I, B).

[18] See Argument I, B.

Appellees request that this Court affirm the judgment below and declare the Act valid in its entirety.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

GERALD B. CURINGTON
Assistant Attorney General
Florida Bar No. 0224170

OFFICE OF THE ATTORNEY GENERAL
The Capitol, PL-01
Tallahassee, Florida 32399-1050
(904) 488-8253

COUNSEL FOR DEFENDANTS/APPELLEES

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **DEFENDANTS/APPELLEES' ANSWER BRIEF** has been furnished to **RICHARD C. MCFARLAIN** and **CHARLES A. STAMPELOS**, McFarlain, Wiley, Cassedy & Jones, P.A., 215 South Monroe Street, Suite 600, Post Office Box 2174, Tallahassee, Florida 32316-2174; **BILL L. BRYANT**, Katz, Kutter, Haigler, Alderman, Marks & Bryant, P.A., 106 East College Avenue, Tallahassee, Florida 32301, Counsel for Plaintiffs/Appellants; **CAROL A. LICKO**, Thomson, Muraro, Razook & Hart, P.A., One Southeast Third Avenue, Suite 1700, Miami, Florida 33131, Counsel for Intervenor/Appellee; and **TIMOTHY J. WARFEL**, Messer, Vickers, Caparello, Madsen, Lewis, Goldman &

Metz, P.A., Suite 701, 215 South Monroe Street, Post Office Box 1876, Tallahassee, Florida 32302-1876, Counsel for Amicus Curiae, by U. S. Mail this 31 day of March, 1994.

GERALD B. CURINGTON