IN THE SUPREME COURT OF FLORIDA

CASE NO. 83,249



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.

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.
_____/

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# ANSWER BRIEF OF INTERVENOR/APPELLEE BILL JONES

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## STATEMENT OF THE CASE

Intervenor/Appellee Bill Jones, as Executive Director of Common Cause/Florida, accepts the Statement of the Case as set forth in Appellant's Initial Brief.[1]

## STATEMENT OF THE FACTS

Intervenor/Appellee Bill Jones accepts the Statement of the Facts as set forth in Appellant's Initial Brief.

## SUMMARY OF THE ARGUMENT

Section 106.32, Florida Statutes, of the Florida Election Campaign Financing Act (the "Act"), is a valid appropriation, and the trial court's Final Judgment upholding the constitutionality of this Section should be affirmed. The Act has been adopted by the Florida Legislature to advance a compelling public interest, and should be liberally construed to ensure the public receives the benefits of this critical legislation.

The legitimacy of the State's compelling interest in election campaign financing reform is not in doubt. Preserving the integrity of the election process by supporting candidates who are free from the influence of special interest money and, thus, removing corruption from politics, is a compelling interest. As noted by the Legislature, "the costs of running an effective campaign for statewide office have reached a level which tends to discourage persons from becoming candidates and to limit the persons who run for such office to those who are

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[1] Citations to the documents in the Record on Appeal shall be by (R.) followed by a page reference and exhibit number, where appropriate. The Plaintiffs, Republican Party of Florida, et al., shall be referred to as Appellants and Defendants, Jim Smith, et al., shall be referred to as Appellees.

independently wealthy, who are supported by political committees representing special interests which are able to generate substantial campaign contributions, or who must appeal to special interest groups for campaign contributions." Section 106.31, Florida Statutes (1993). The Legislature has thus adopted the Act to dispel the public misperception that government officials are unduly influenced by those special interests to the detriment of the public interest, and to encourage qualified persons to seek statewide office who otherwise would not or could not do so. Section 106.31, Florida Statutes (1993).

The legislative history of the Act and the applicable case law confirm the validity of Section 106.32 as a valid appropriation. Mr. Bill Jones, Executive Director of Common Cause/Florida, was instrumental in encouraging the adoption of the Act, and for all the reasons set forth herein asserts the constitutionality of Section 106.32 of the Florida Election Campaign Financing Act should be upheld, and the trial court's Final Judgment affirmed.

## ARGUMENT

### I. THE TRIAL COURT PROPERLY GRANTED APPELLEES' MOTION FOR SUMMARY JUDGMENT AND CONCLUDED THAT SECTION 106.32(1) IS A VALID APPROPRIATION

#### A. SECTION 106.32 LAWFULLY APPROPRIATES MONEY TO THE TRUST FUND.

Appellants Republican Party of Florida, Executive Committee of the Republican Party of Florida, Tom Slade individually, and Tom Slade, as Chairman of the Republican State Executive Committee of Florida have attacked the constitutionality of Section 106.32, Florida Statutes (1993) ("Section 106.32"). Common Cause/Florida, acting through its Executive Director, Bill Jones, was a leader in the adoption in 1986 of the Florida Election Campaign

Financing Act, Sections 106.30-.36, Florida Statutes (1993) (the "Act") and the amendment of that portion of the Act which is Section 106.31(1) in 1991. Intervenor/Appellee Bill Jones, on behalf of Common Cause/Florida, intervened in the case below to support the constitutionality of Section 106.32 against Appellants' attack.

This brief is filed in support of Common Cause/Florida's assertions that Section 106.32 fully passes constitutional muster; and that the Final Judgment granting Appellees' Motion For Summary Judgment was properly granted on this issue as a matter of law.

Section 106.32 can not be isolated from the entire Act of which it is an integral part. The Florida Election Campaign Financing Act is designed to curb the reliance of political candidates on special interest financing. Partial public financing is provided, but the "stick" that goes with that "carrot" is that the candidate who seeks the partial public financing must agree to a cap on overall spending. If Appellants succeed in striking the funding mechanism for the partial public financing, the compelling public purpose of reducing the actual and apparent influence of special interests on the electoral process will be lost.

The constitutionality of partial public financing of political campaigns was first posed at the federal level. All constitutional issues were faced and disposed of in Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976). The Supreme Court there noted of such legislation:

> . . . Congress was legislating for the 'general welfare' -- to reduce the deleterious influence of large contributions on our political process, to facilitate communication by candidates with the electorate, and to free candidates from the rigors of fundraising.

96 S.Ct. at 669.

> [This Act] is a congressional effort, not to abridge, restrict, or censor speech, but rather to use public money to facilitate and

> enlarge public discussion and participation in the electoral process, goals vital to a self-governing people.

96 S.Ct. at 670.

> It cannot be gainsaid that public financing as a means of eliminating the improper influence of large private contributions furthers a significant governmental interest.

96 S.Ct. at 671.

Carrying the concept of partial public funding of political campaigns forward to the state level, the Florida Legislature in 1986 created the Florida Election Campaign Financing Act. Its legislative intent is set out in Section 106.31:

> The Legislature finds that the costs of running an effective campaign for statewide office have reached a level which tends to discourage persons from becoming candidates and to limit the persons who run for such office to those who are independently wealthy, who are supported by political committees representing special interests which are able to generate substantial campaign contributions, or who must appeal to special interest groups for campaign contributions. The Legislature further finds that campaign contributions generated by such political committees are having a disproportionate impact vis-a-vis contributions from unaffiliated individuals, which leads to the misperception of government officials unduly influenced by those special interests to the detriment of the public interest. The Legislature intends §§ 106.30-106.36 to alleviate these factors, dispel the misperception, and encourage qualified persons to seek statewide elective office who would not, or could not, otherwise do so.

In evaluating this Act and its legislative intent, the Florida Supreme Court has applied the teaching of Buckley v. Valeo to this Florida counterpart, stating in State by Butterworth v. Republican Party of Florida, 604 So. 2d 477, 480 (Fla. 1992):

> The State asserts that 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 is a compelling interest.

The legitimacy of this interest is not in question . . .

The overall constitutionality of the Act is, of course, not the issue here. Appellants did not attack the constitutionality as such of the Act, but rather sought to gut its impact by holding its method of financing unconstitutional while leaving its "good intentions" intact.

Section 106.32 sets out the basic financing of the Act, providing for the creation of an Election Campaign Financing Trust Fund. Intended funds to be deposited in the Fund are named in subsections (2) and (3) of Section 106.32, but in the very first subsection, subsection (1), the Legislature stated its intent clearly:

> 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 §§ 106.30-106.36.

Subsections (2) and (3) then specify for deposit into the Fund of proceeds from certain filing fees and proceeds from certain assessments. The use of proceeds from these assessments (which essentially were a "skimming" of contributions received by committees of continuous existence, political parties, and political candidates) was struck down by the Florida Supreme Court at the instance of Appellants here in State by Butterworth v. Republican Party of Florida, supra.

In Butterworth, Appellants did not raise the issue of the constitutionality of the remainder of Section 106.32 if they should succeed (as they did) in striking one of two designated sources of revenue. Rather, Appellants first attempted to have the Legislature designate an alternative source. (R. 14-205, Exhibit 4 at 1). Having failed in that venture, Appellants appeared before the trial court below to argue that its success in striking down one of the designated sources invalidated the basic funding concept (set forth in the first

subparagraph) -- that general revenue would be used to the extent the designated funds are insufficient. Appellants failed in their venture before the trial court below as well.

Appellants have asserted that the requirement of Section 106.32(1) that "additional funds shall be transferred to the . . . Fund from general revenue in an amount sufficient to fund qualifying candidates" is an invalid appropriation because its amount is unknown and the Legislature did not meet and fix a specific amount.[2] As noted, this argument was not raised before striking down one of the designated sources when a lesser amount of general revenue would have been required.[3] Apparently Appellants believed the magnitude of the amount required from general revenue changes the constitutional calculus.

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[2] The following comments of Chief Justice Burger, dissenting as to the constitutional validity of the public financing provisions, are interesting in light of Appellants' attack here:

> Here . . . Congress has not itself appropriated a specific sum to attain the ends of the Act but has delegated to a limited group of citizens -- those who file tax returns -- the power to allocate general revenue for the Act's purposes -- and of course only a small percentage of that limited group has exercised the power. There is nothing to assure that the "fund" will actually be adequate for the Act's objectives. Thus, I find it difficult to see a rational basis for concluding that this scheme would, in fact, attain the stated purposes of the Act when its own funding scheme affords no real idea of the amount of the available funding.

Buckley v. Valeo, supra, 96 S.Ct. at 741. The majority of the Supreme Court obviously thought the Chief Justice's concerns were without merit. We submit Appellants' contentions are equally without merit.

[3] Despite Appellants' assertions, it is not clear what amount of money will be required.

## B. THE ACT CREATED A LAWFUL CONTINUING APPROPRIATION.

Appellants' case is based on a legislative change in Section 106.32(1) in 1991 and on the parsing of statutory definitions found in Section 216.011, Florida Statutes.

Prior to 1991 the last sentence of Section 106.32(1) read:

> Each year in which a general election is to be held for the election of the Governor and Cabinet, the Legislature shall appropriate to the Election Campaign Financing Trust Fund from general revenue an amount sufficient to fund qualifying candidates pursuant to the provisions of this act.

(R. 14-205, Exhibit 1).

In 1991 the Legislature substituted the current sentence:

> 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 §§ 106.30-.36.[4]

Absent some clear evidence to the contrary, one would assume on reading this change that the Legislature had decided to change from an annual appropriation to a continuing "as needed" appropriation. Such a change would make sense in light of the facts that only two candidates have qualified for matching funds under the Act since its adoption in 1986, and that the amount of money required would not be known until the legislative session is over and only on a determination of the number of candidates who would want public funds and the extent to which they were capable of raising the threshold amounts. Reviewing the legislative history shows there is no clear evidence to the contrary of the legislative intent manifest from the statute itself.

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[4] The Legislature also deleted the final sentence of that Section, which had read: "In the event such appropriated moneys are insufficient to fully fund qualifying candidates, available funds shall be distributed on a proportional basis based on total available funds."

Turning to the statutory definitions in Section 216.011,[5] it becomes apparent that none of these definitions has ever been the subject of caselaw. This is hardly surprising, since the definitions themselves are attempts in few words to capsulize prior caselaw. Therefore, the parsing of the statutory language is far less useful than the parsing of the cases that that statutory language sought to codify.

Framed by this prior caselaw, it is clear why Section 106.32 is both an "appropriation" and a "continuing appropriation". Appellants' statutory parsing does not change that.

Of course, several of the cases that construe the term "continuing appropriation" also construe the included word "appropriation," and it is not easy to separate the two. In fact, Appellants almost concede that if Section 106.32(1) is validly an appropriation, then it is also validly a continuing appropriation. A look at this prior caselaw is informative.

The seminal case is probably State v. Southern Land & Timber Company, 45 Fla. 374, 33 So. 999, 1003 (Fla. 1903).[6] This case involved a property tax to be used for "public health purposes." The Court upheld the tax, observing:

> The Legislature seems to have regarded [the statute] as being, ex proprio vigore, equivalent to an appropriation law, as we can discover no appropriation in the general appropriation laws for the board of health purposes. This is the practical construction placed

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[5] Appellants make much of the statutory definition of "appropriation" found in Section 216.011(1)(b). That definition appears to deal with appropriations in the general appropriations bill, since the "specific purpose" of an appropriation contained in a general bill is clear. Cf. Amos v. Moseley, 74 Fla. 555, 77 So. 619 (Fla. 1917), similarly construing the term "appropriation" in the Florida Constitution as referencing the general appropriation bill.

[6] The first decision of the Florida Supreme Court finding constitutional an appropriation implicit in a law directed to a general subject (a road tax) is probably Commissioners of Duval County v. City of Jacksonville, 36 Fla. 196, 18 So. 339 (1895). However, the Southern Land decision was the first to state the law on the subject clearly.

> upon the section by the administrative officers of the state, and we think the language of the section warrants this construction -- especially so, taken in connection with section 1, art. 15 of the Constitution.[7]

Lainhart v. Catts, 73 Fla. 735, 73 So. 47, 54 (Fla. 1917) involved the constitutionality of an acreage tax in the Everglades drainage district. The proceeds of the tax were to be used to cover the expenses of draining and reclaiming the lands in the district. The Supreme Court first stated the issue:

> It is insisted that the provision of the act authorizing the drainage commissioners to expend the proceeds derived from the special assessments, without a special appropriation by the Legislature, is in violation of section 4 of article 9 of the Constitution, providing that 'no money shall be drawn from the treasury except in pursuance of appropriations made by law."

The Court then responded:

> The money raised by the special assessment is not paid into the general treasury of the state, but is a special fund, placed in the custody of the state treasurer to be expended for certain specified purposes designated by the act . . .
>
> The object of such a constitutional provision as the one last referred to is to prevent the expenditure of the public funds without the consent of the people, by their representatives in legislative acts, and 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 . . .
>
> An appropriation may be made by setting apart and specially appropriating the money derived from a particular source of revenue to a particular use . . .
>
> It seems clear from the acts under consideration that the Legislature intended to, and did, appropriate the revenues derived

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[7] This case also makes clear that appropriations may be in separate laws as well as in the general appropriation act, as acknowledged by Article III, Section 19(b) of the Florida Constitution, adopted in 1992. Appellants seem at times to argue to the contrary, but their muted words to this effect are meritless.

> from the special assessment to carry out the very purpose of the acts.

The act was upheld.

Amos v. Moseley, 74 Fla. 555, 77 So. 619, 626 (Fla. 1917) involved a taxpayer's effort to enjoin the payment of salaries to the state tax commission created by a new law claimed to be unconstitutional. The law provided, among many other things, for the payment of these salaries on a continuing basis. The Court peremptorily disposed of both the validity of the appropriation and of its continuing nature:

> We are strongly of the opinion that this act is not in contravention of . . . the Constitution, because it is not a law "making appropriations for the salaries of public officers and other current expenses of the state," but is one inaugurating a new governmental policy in the assessment of property for 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.
>
> The appellee next contends that because the act makes a continuing appropriation, it is in contravention of . . . the Constitution . . .
>
> We fail to find in this provision of the Constitution any inhibition on the power of the Legislature to make continuing appropriations. Most, if not all, the laws hereinbefore mentioned contained continuing appropriations, and the power of the Legislature to do this having been sustained in the case of State v. Southern Land & Timber Co., supra, it disposes of this contention.

Finally, Carlton v. Mathews, 137 So. 815, 836-7 (Fla. 1931) involved the creation of a second gas tax, the proceeds of which were to be used to create roads. The Court stated:

> We think the provisions for the appropriation of the funds is sufficiently definite and certain . . .
>
> This principal has been recognized in previous decisions of this court . . . We think the appropriation as provided in the act

> is sufficiently definite appropriating a proportional part of a fixed tax payable monthly to each county which is to be reimbursed under the act. It will be noted that the basis of the appropriation in the instant case is officially determined and fixed by the comptroller of the state . . . .
>
> Appellee further objects that the appropriation as provided in the law is a continuing appropriation. Even if it may be held to be a continuing appropriation, it would not be invalid. In former decisions of this court, laws providing for continuing appropriations have been upheld.

Appropriations, and continuing appropriations, having thus been repeatedly upheld, the issue simply did not arise thereafter, and this long-time law of the case was encapsulated in the statutory definitions of Section 216.011, which definitions, until this case, do not appear to ever have been asserted to change this long-time caselaw.

### C. THE ACT LAWFULLY FINANCES THE TRUST FUND.

Appellants also assert that Section 106.32 is invalid because it does not provide for an amount, and leaves the final determination of that amount to an administrative agency. This contention was likewise disposed of a long time ago. The Florida Supreme Court in State ex rel. Bonesteel v. Allen, 91 So. 104, 105 (Fla. 1922) involved a license tax, the proceeds of which were to be paid under a formula for "the maintenance of the State Road Department", for "a state aid fund" to be used by the various counties "for the purpose of construction and maintenance of county roads", and for "construction and maintenance only of state and state federal aid roads." This law was upheld against a challenge that it was an invalid appropriation, the Court observing:

> It [an appropriation] is a setting apart of money formally or officially for a special use or purpose . . ., and, where that is done

> by the Legislature in clear and unequivocal terms, it is an appropriation.
>
> Statutes setting apart or designating public moneys for special governmental purposes have been held to be appropriations, notwithstanding the word "appropriation" is not used [referencing a statute creating the State Board of Health and assessing a property tax "to be used for public health purposes of the state"] . . . [where the] word "appropriation" is not used, but this section was construed by this court in the case of State v. Southern Land & Timber Co. . . ., where it was held that the language was equivalent to an appropriation and this construction was sustained in the case of Amos v. Moseley. . . .[8]

Id. at 106.

Then in State ex rel. Caldwell v. Lee, 27 So. 2d 84 (Fla. 1946), the Supreme Court upheld a law which appropriated $3 million for a post-World War II program for construction of needed State buildings, defined a tentative building program, and then authorized the Budget Commission to determine whether there were unneeded funds in any state account and "appropriate" these surplus funds for the building program.[9] The Board of Commissioners of State Institutions then projected a building program of $10 million, and entered into contracts for building construction of about $5.5 million. The Budget Commission then determined that

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[8] As Justice West, concurring, noted:

> That a statute may have for its object the regulation of occupations or businesses only, or that it may have for its object the production of revenue only, or that it may perform the double function of regulating occupations or businesses under the police power and producing revenue under the taxing power of the state without rendering it obnoxious to any constitutional inhibition, is also well established.

Id. at 110.

[9] The statute further provided that if the Budget Commission misestimated, then the Commission could "deappropriate" and return to the now underfunded program from the state building fund that which it was now determined to need.

there were surpluses of almost $4 million in various funds, $2 million of which was in the General Revenue Fund, and "did adopt a resolution setting aside and transferring[10] [such] sums to the State Building Fund." (Id. at 86, emphasis added). The Court, upholding these actions, observed:

> 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 . . . .

Id. at 87.[11] In words directly in point in relation to Appellants' attack on Section 106.32, the Supreme Court stated:

> The purpose of the expenditure in this case is not challenged; the assault is directed solely at the manner in which it is undertaken. The case of Carlton et al. v. Mathews . . . . is a complete answer to this contention.

Id. The Court then disposed of another of Appellants' contentions here:

> We do not consider this an exercise of legislative power by the Budget Commission. Appropriations have frequently been made contingent on an audit or the findings of an administrative board and have been upheld. Carlton v. Mathews, supra. . . .

Id. Thus, Appellants' contention that Section 106.32 is somehow an invalid appropriation simply cannot survive in the face of the legislative history and applicable case law.

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[10] This word is underscored only because Appellants make so much of it.

[11] State ex rel. Davis v. Green, 116 So. 66 (Fla. 1928) is an illustration of what it takes for a law to be unconstitutional. That law created a highway commission which was to negotiate the cost of acquiring a privately owned toll highway by calculating, on its own, what it would cost the state to build a replacement highway at prevailing prices, then offer that amount to the owner, and, if the owner accepted, the state comptroller was to pay the owner that amount from the general revenue of the State.

## CONCLUSION

The Florida Election Campaign Financing Act is designed to curb the reliance of political candidates on special interest financing, and is strongly supported by Common Cause/Florida. Statutes, such as this Act, that advance public policy should be given a liberal construction to ensure that the public receives the benefits of the legislation. Clearly, the legitimacy of the state's compelling interest in election campaign financing reform is not in doubt. Butterworth v. Republican Party, 604 So. 2d 477 (Fla. 1992). If Appellants succeed in striking the funding mechanism here for the partial public financing, the compelling public purpose of reducing the actual and apparent influence of special interests on Florida's electoral process will be lost. For all these reasons, Intervenor/Appellee Bill Jones, as taxpayer and Executive Director of Common Cause/Florida asserts the constitutionality of Section 106.32 of the Florida Election Campaign Financing Act should be upheld, and the trial court's Final Judgment affirmed.

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## CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing Answer Brief of Intervenor Appellee Bill Jones, as Executive Director of Common Cause/Florida was served by mail this 30th day of March, 1994, upon the following:

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