SUPREME COURT OF FLORIDA

AMERICAN BANKERS INSURANCE COMPANY, et al.,

Petitioners,

vs.

THE HONORABLE LAWTON CHILES, THE HONORABLE GERALD A. LEWIS, and THE HONORABLE TOM GALLAGHER, in their respective official capacities, and As Constituting the State Board of Administration,

Respondents.

CASE NO. 86,682
DCA CASE NO. 94-3111

RESPONDENTS' ANSWER BRIEF

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STATEMENT OF THE CASE AND FACTS

This is the respondents' answer brief by The Honorable Lawton Chiles, The Honorable Gerald A. Lewis and The Honorable Tom Gallagher, who were the cabinet members comprising the State Board of Administration (SBA) at the time this suit was filed. These cabinet members functioning in their official capacities were the defendants in the trial court and the appellees before the First District Court of Appeal. They will be referred to herein as the SBA which is the governmental entity administering the Florida Hurricane Catastrophe Trust Fund (CAT Fund), a statutorily created trust fund which provides the equivalent of catastrophic reinsurance. (R.1-18).

The plaintiffs/petitioners were various insurance companies attempting to avoid payment of premiums and assessments to the CAT Fund. Several of the insurance company/plaintiffs have withdrawn from the case and the lead plaintiff is now American Bankers Insurance Company resulting in a change in the style of the case since the appeal began. The plaintiffs/petitioners will generally be referred to herein as the insurance companies.[1]

This petition is based on a certified question by the First District Court of Appeal. The District Court initially issued its Opinion affirming the trial court's summary judgment finding the CAT Fund constitutional on August 1, 1995, and thereafter issued its further Opinion Certifying Question on September 22, 1995. See

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[1]The appellate record is designated in this brief as (R.___) and the petitioners' brief by the insurance companies is designated (Br.__).

Service Insurance Company, et al. v. Chiles, et al., 20 Fla. L. Weekly D1760 (Fla. 1st DCA 1995). The District Court and the trial court held that the legislation creating the Hurricane Catastrophe Trust Fund, Chapter 93-409, Laws of Florida, was constitutional and not violative of Article III, § 19(f)(1) of the Florida Constitution which governs the creation of trust funds. Enacted in 1993, Article III, § 19(f)(1) requires a 3/5th vote and a separate bill to create a trust fund and provides:

> Section 19. State budgeting, planning and appropriations processes.-
>
> * * *
>
> (f) TRUST FUNDS.
> (1) No trust fund of the State of Florida or other public body may be created by law without a three-fifths (3/5) vote of the membership of each house of the legislature in a separate bill for that purpose only.

The various insurance companies seeking to avoid assessments and premium payments to the CAT Fund sued in a multi-count complaint attacking the creation of the CAT Fund as enacted by Ch. 93-409, Laws of Florida, which was codified as section 215.555, Florida Statutes (1994 Supp.). The complaint contained numerous factual and legal attacks on many different aspects of the CAT Fund, but all of the counts were stayed pending final resolution of Count IV alone which asserted that Ch. 93-409 was facially violative of Article III, § 19(f) and unconstitutional. This Court granted the insurance companies a stay of the other proceedings pending decision on this constitutional issue. This was a case of first impression below because the new constitutional provision (Art. III, § 19) on the creation of trust funds had not been

previously construed. The First District's opinion held the statute constitutional and in compliance with Article III, § 19(f). There was never any question but that the CAT Fund had been created in a separate bill (Ch. 93-409), but the insurance companies asserted this bill also contained other closely related matters which were not absolutely "indispensable to creation" of the trust fund and that this related, but not indispensable material, rendered the entire statute void.

Before this Court, the insurance companies choose to discuss only the words of the constitutional provision requiring "a separate bill for that purpose only" and do not choose to discuss or even mention the heightened vote requirement of a 3/5ths majority by both houses of the Legislature. There is no question but that the Legislature did create this trust fund by a separate bill and by more than a 3/5th majority. Further, legislative history shows that the members of the Legislature fully intended to comply with the constitutional separate bill requirement and that they were fully aware of this new constitutional requirement when the bill was being debated. The wording of Ch. 93-409, ¶ 9 section 1 specifically recognizes the applicability of Article III, § 19(f) and members of the Legislature mentioned the new "separate bill" requirement in debating Ch. 93-409 and Ch. 93-410 which was the companion bill making numerous changes in general statutory insurance law in the wake of Hurricane Andrew. (R.122,131,140,147). The two bills, Ch. 93-409 on the trust fund and Ch. 93-410 on general insurance reform, were proposed, debated and passed

separately, solely because of the new constitutional provision. The legislative history of the bills clearly so indicated and was introduced in the trial court without objection. (R.80-149).

The First District Court of Appeal has provided this Court with both a majority opinion and a certified question which presents the contrary view from the dissent by Judge Peter Webster. The insurance companies now advance the argument that the trust fund bill (Ch. 93-409) contained several provisions which were not "indispensable to creation" of the fund and that therefore the entire bill creating the fund is void. The First District rejected this argument and held that all provisions relating to the purpose, administration and funding of the trust fund were properly included in the bill.

Facts Not Before The Court

In their factual statement, the insurance companies improperly refer to numerous matters which were never before the trial court or the District Court of Appeal. This Court should simply disregard these improper factual assertions which will only be briefly commented upon here. The insurance companies complain about having "to pay unbargained-for amounts" for reinsurance from the Fund. (Br.1). They object to insurance moratorium extensions by the Florida Legislature in section 627.7013, Florida Statutes (1994 Supp.) and section 215.555 (1994 Supp.). (Br.3). They assert that they are the victims of "coerced books of business" and that they are required to accept Fund reinsurance even though they allegedly already have supposed adequate reinsurance. Without any

pretense of a supporting record, the companies contend that they do not need or want CAT Fund coverage for hurricane losses. (Br.3). The Florida Legislature, in enacting the CAT Fund in the aftermath of Hurricane Andrew, made specific findings of a potential crisis in the insurance and reinsurance industry brought on by Hurricane Andrew and the First District Court of Appeal noted this legislative finding in its opinion. The contrary factual arguments by the insurance companies are not properly before this Court because at this point they are nothing more than yet unanswered and unproven allegations in a complaint which has been placed "on hold" pending final outcome of this appeal on the request of the insurance companies. See the Motion to Stay and this Court's stay order of December 12, 1995.

The insurance companies also argue that the entire Hurricane Catastrophe Trust Fund program "implicates issues of federalism" and that foreign insurance companies will be discriminated against under the overall program.[2] (Br.4). These are all totally premature and improper scare tactic arguments. The insurance companies filed their initial complaint and also filed Chapter 120 administrative proceedings all of which remain before the trial court and the Division of Administrative Hearings. All of the other issues in the multi-count complaint and in the administrative proceeding have been effectively stayed pending review of the

[2]All of the plaintiff/insurance companies in this case are authorized to and are in fact carrying on business in the state of Florida so their standing to even make this argument is very doubtful.

summary judgment finding the CAT Fund constitutional. None of these factual issues have been tried and indeed a Motion to Dismiss the complaint (which has been amended five times) is still pending in the trial court. The insurance companies successfully sought a stay as to all of these matters and these companies are exceedingly premature in making arguments about already having "adequate reinsurance coverage" in the face of the directly contrary legislative findings. We doubt that any of these other issues will ever be the subject of serious proof from the plaintiffs, but it is certainly too early to consider these alleged "facts" as stated in the opposing "Statement of the Facts".

One other comment is necessary on this portion of the brief. The insurance companies now quote and rely upon section 215.3207, Florida Statutes, the general trust fund statute, as amended in 1993 shortly after the new constitutional provision was adopted. SBA had relied upon this statute in the trial court and the District Court of Appeal because it showed the Legislature intended that statutes creating trust funds could contain more than solely "creation" language. The insurance companies had argued below that section 215.3207 was not applicable and that it did not constitute a "persuasive, contemporaneous construction" of the new constitutional provision by the Florida Legislature. The insurance companies now quite inconsistently change their position and specifically rely upon the statute. A copy of footnote Number 1 from the insurance companies' prior reply brief in the District Court of Appeal is attached as an appendix to this brief. There,

the insurance companies argued: "Section 215.3207 binds no one. The Legislature is free to ignore it in subsequent legislation. . . . § 215.3207 does not rise to the level of [a] persuasive, contemporaneous construction". Despite this prior position, the insurance companies now rely upon the very same statute before this Court asserting it to have been a contemporaneous construction by the Legislature. This was, in fact, the SBA's position before the District Court of Appeal and will continue to be its position now before this Court.

SBA respectfully submits that the majority opinion of the First District Court of Appeal is correct and that the certified question should be answered by affirming the majority opinion with a finding that a trust fund may be created in legislation which contains all items that reasonably relate to the purpose, administration and funding of a trust fund. The Constitution should not be so narrowly construed as to invalidate the creation of this Hurricane Catastrophe Trust Fund. The bill (Ch. 93-409) creating that fund does contain matters closely related to the fund, but which were not absolutely "indispensable to creation" of the fund. No such "indispensable to creation" requirement exists in the Constitution and this Court should not impliedly create such a requirement as urged by the petitioners. This Court should construe the statute (93-409) to be in harmony with a reasonable interpretation of Article III, §19(f) of the Constitution.

SUMMARY OF THE ARGUMENT

Devastating property damage in Florida resulting from Hurricane Andrew produced an insurance and reinsurance crisis. Insurance company insolvencies following Hurricane Andrew convinced the Florida Legislature in special session that many property insurers were unable or unwilling to maintain reinsurance sufficient to pay claims in full despite premiums having been paid. In a specially convened session, the Legislature formulated, debated and passed Chapter 93-409 creating the Florida Hurricane Catastrophe Trust Fund and Chapter 93-410, entitled Insurance -- General Amendments which substantially reformed the Florida Insurance Code. Article III, § 19 of the Florida Constitution had been recently adopted to require the creation of any trust fund to be passed by a 3/5ths vote in a separate bill for that purpose only. Because of this new constitutional provision, the new trust fund was not made a part of the General Insurance reforms but was instead formulated, debated and passed as a separate bill for that purpose only. Chapter 93-409 creating the CAT Fund was passed by an overwhelming vote, far exceeding the 3/5ths vote requirement in the constitution.

Seeking to avoid statutorily imposed payments to the CAT Fund, several insurance companies sued contending that the statute creating the trust fund contained matters which were not indispensable to the creation of the fund. The companies asserted that the new constitutional provision had to be strictly interpreted to void the entire statute if any non-essential or not

"indispensable to creation" language appeared in the statute. The companies contended that creation language was the only language to be allowed in a skeletal bill and that no language concerning the closely related details of funding, purpose or administration could be included. Under the companies' argument, language such as the Legislature's factual findings of "unprecedented levels of catastrophic insured losses" the and resulting crisis would have invalidated the entire statute creating the trust fund.

The trial court issued a summary judgment finding the CAT Fund statute to be constitutional and not violative of either Article III, § 6 or Article III, § 19(f). The First District Court of Appeal affirmed and the majority opinion correctly rejected the very narrow interpretation urged by the insurance companies. The District Court found that such an interpretation was "overly restrictive . . . unreasonable and flies in the face of the obvious intent of Article III, § 19." The Court further stated:

> A prohibition against including the details of purpose, administration, and funding of a trust fund from the bill creating the fund (required to be adopted by a three-fifths vote) would circumvent constitutional intent. That intent is to have heightened scrutiny prior to creating trust funds. If a skeletal bill was all that was allowed or required to create a trust fund, the details concerning purpose, administration, and funding would have to be adopted in a separate bill not subject to the three-fifths voting requirement. This clearly was not the intent of the constitutional provision.

The District Court correctly interpreted the constitution and was also correct in its conclusion that all contested portions of Chapter 93-409 (reinsurance, bonding, emergency assessments and retaliatory taxes) were directly related to the CAT Fund's

creation. The constitutional interpretation advanced by the insurance companies is at best unreasonable, strained and hypertechnical. The District Court of Appeal adopted a reasonable interpretation in accordance with established law on constitution interpretation. In the alternative, the law of severability of extraneous statutory provisions would apply to uphold the validity of the trust fund creation. The majority opinion by the District Court of Appeal should be affirmed and the CAT Fund held constitutional.

ARGUMENT

GIVEN THE REQUIREMENT OF ARTICLE III, SECTION 19(f)(1), THAT NO TRUST FUND BE CREATED EXCEPT "IN A SEPARATE BILL FOR THAT PURPOSE ONLY," MAY THE LEGISLATURE INCLUDE WITHIN A BILL CREATING A TRUST FUND ALL ITEMS THAT RELATE TO THE PURPOSE, ADMINISTRATION, AND FUNDING OF THE TRUST FUND, OR SHOULD THE BILL CREATING THE TRUST FUND BE LIMITED TO THOSE MATTERS LOGICALLY INDISPENSABLE TO THE TRUST FUND'S CREATION?

In accordance with this Court's established precedent for both statutory and constitutional construction, Article III, § 19(f) should be interpreted to both allow and require the statutory creation of a trust fund in a separate bill which includes all items relating to the purpose, administration and funding of the trust fund. Only by such a ruling will the 3/5ths heightened vote requirement of the constitutional provision be given validity and effect. A ruling which would require the creation of a trust fund in a bill merely stating that, "A trust fund is hereby created"[3] would be contrary to the clear intent and purpose of the 3/5ths vote requirement. Application of this heightened vote mandate to <u>all</u> of the details of the newly created trust fund was clearly what the Tax and Budget Reform Commission intended in drafting this constitutional amendment. The amendment does not require a limitation to only matters which are absolutely "indispensable to creation" of the fund. This would be a hypertechnical

[3]Subsection (3) of Ch. 93-409 begins with the words: "There is created the Florida Hurricane Catastrophe Fund to be administered by . . . ." According to the insurance interests, these were the <u>only</u> words which could constitutionally have been included.

interpretation. Further, the doctrine of severability would apply to this statute even if there were a technical violation and any extraneous portion of the statute could be deleted and the creation of the trust fund upheld.

Principles of Constitutional and Statutory Construction

Statutes enacted by the Florida Legislature carry with them a strong presumption of validity. State v. Kinner, 398 So. 2d 1360, 1363 (Fla. 1981). In considering any attack on legislation, a court must "resolve all doubts as to the validity of a statute in favor of its constitutionality." State v. Rodriguez, 365 So. 2d 157, 158 (Fla. 1978); Belk-James v. Nuzum, 358 So. 2d 174 (Fla. 1978). Statutes must be construed, if possible, "to avoid unconstitutionality and to remove . . . doubts." State v. Canova, 94 So. 2d 181, 185 (Fla. 1957). The presumption of constitutionality imposes a very heavy burden on one attacking the validity of a statute. Dept. of Business Reg. v. Smith, 471 So. 2d 138 (Fla. 1st DCA 1985).

This case also requires an interpretation of the Florida Constitution, and a separate set of more liberal principles apply to this endeavor. In Florida Soc. of Ophthalmology v. Fla. Optometric, 489 So. 2d 1118 (Fla. 1986), this Court stated at page 1119:

> We refer to two fundamental principles of constitutional adjudication. First, constitutions "receive a broader and more liberal construction than statutes." . . . Second, constitutional provisions should not be construed so as to defeat their underlying objectives.
>
> * * *

> Constitutions are "living documents," not easily amended, which demand greater flexibility in interpretation than that required by legislatively enacted statutes. Consequently, courts are far less circumscribed in construing language in the area of constitutional interpretation than in the realm of statutory construction. . . . When adjudicating constitutional issues, the principles, rather than the direct operation or literal meaning of the words used, measure the purpose and scope of a provision. . . . ("[t]he interpretation of constitutional principles must not be too literal"). (citations omitted).

Here the insurance companies seek a hypertechnical and "too literal" interpretation which is neither reasonable or practical. Their interpretation would also violate the cannon of construction that every provision of the constitution is to be given meaning and effect. Article III, § 19 as adopted in 1992, contains a great deal more than subsection (f) on trust funds. A detailed budgeting, planning and appropriations process is set out and the overriding purpose is budgetary oversight and supervision by the Legislature. The District Court noted this in its opinion pointing out the detailed process created in subsections (a) through (h) of § 19. The court held the dissent's interpretation was "unreasonable" and that such a "restrictive" view would "circumvent constitutional intent." Here, the heightened 3/5ths vote requirement of Article III, § 19 applies not merely to the creation of a trust fund but also to the creation of all of the necessary and reasonably related parts and elements of that trust fund which the District Court termed "reasonably relating to creation".

The Tax and Budget Reform Commission wanted to make it more difficult to create a new trust fund and intended that all the

elements and related details of that fund would be in the same separate bill and be subject to the same 3/5ths vote requirement. The Commission certainly was not trying to make it easier to create a trust fund by limiting the creation statute to a mere sentence or two.

The Constitution's Single-Subject Provisions

The insurance companies argue totally unrelated single-subject precedents. The Florida Constitution contains at least four[4] provisions which can be lumped together as "single-subject" requirements. In fact, none of these provisions contains the word "single" and only three of them contain the word "subject." These provisions can be summarized as follows:

> Article III, § 6 - General Laws - "One subject and matter properly connected therewith."
>
> Article III, § 12 - Appropriation Bills - "No other subject."
>
> Article III, § 19(f) - Trust Funds - "Three-fifths (3/5) vote of the membership of each house of the Legislature in a separate bill for that purpose only."
>
> Article IX, § 3 - Citizens Initiative Amendments - "One subject and matter directly connected therewith."

Obviously, only one of these constitutional provisions contains a heightened (3/5th) vote requirement. This 3/5ths vote requirement effectively eliminates any danger of logrolling. Linking or rolling an unpopular item to a more popular bill accomplishes nothing if a 3/5ths vote becomes necessary instead of a mere majority. Each of the different provisions use different words and each applies to a different kind of legislative enactment

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[4]There is also another similar provision in Article III, § 19(g) on revenue shortfall legislation.

or to an initiative constitutional amendment. There is an obvious difference between the words "one subject" and the words "separate bill."

Article III, § 19(f) is not merely another single-subject requirement as argued by the insurance companies. The provision has two parts, a 3/5ths vote and a separate bill and the word "created" does not over-shadow the obvious intent of the provision. The court below was required to give effect to both parts. Indeed, SBA suggests that the reason for the "separate bill" requirement is obvious when the history of Florida's trust fund legislation is reviewed. The insurance companies' brief in the District Court pointed out at pages 9 and 10 that in the past numerous different trust funds were created in a single "massive" piece of legislation dealing with a variety of subjects. The insurance companies noted that Chapter 90-136, Laws of Florida, created several different trust funds all in the same bill. This was the kind of legislation which the Tax and Budget Reform Commission sought to change by its "3/5ths vote -- separate bill" proposal.

The insurance companies construct an argument by assuming that all four single-subject provisions are a unified continuum and that Article III, § 19 is the latest in a progression of successively more restrictive provisions designed to prevent logrolling. It is argued that this latest amendment is the most specific and controls over the earlier more general enactments.[5] Jenkins v. State, 385

[5]This principle of construction is generally applicable to statutes rather than constitutional amendments. In any event, there was no previous constitutional provision specifically dealing with trust funds.

So. 2d 1356 (Fla. 1980), concerning the 1980 constitutional amendment limiting the Supreme Court's jurisdiction to review per curium decisions by district courts is cited for this argument, but Jenkins has absolutely no relevance. Florida's single-subject provisions have not been a unified attempt by voters or the Legislature to continually tighten the range of legislative flexibility. There is simply no reason to think that the Florida voters were trying to pass a more restrictive trust fund provision on the theory that other single-subject provisions were not strict enough and needed to be narrowed. At no point do the insurance companies suggest why any legislator would want to logroll an unpopular extraneous bill into a trust fund bill when doing so would subject the unpopular item to a 3/5ths requirement instead of a mere majority. Logrolling is simply an irrelevant concept.

The Intent of the Commission and the Voters

The three single-subject provisions existing before the recent trust fund provision are very different and cannot be viewed together. They have been construed very differently depending upon their subject matter. The provision on general laws has been construed very broadly. Smith v. Dept. of Insurance, 507 So. 2d 1080 (Fla. 1987). The provision on constitutional amendments initiated by citizen petitions has been construed very narrowly. Advisory Opinion to the Attorney General -- Save Our Everglades Trust Fund 636 So. 2d 1336 (Fla. 1994). The provision on general appropriations bills has been construed somewhere in the middle between the two extremes. Brown v. Firestone, 382 So. 2d 654 (Fla. 1980). The Tax Reform Commission proposed the present amendment

and none of the previous amendments were proposed by this Commission. There is simply no relationship between the various provisions. They are certainly not a continuum of an ever increasing restrictive nature as asserted by the insurance companies.

The trust fund restrictions enacted in 1992 were obviously designed to make it more difficult to create a trust fund and to make such funds more accountable in the overall budgetary and appropriations process as detailed in the other subsections of the same constitutional provision. The District Court so found. With specific exceptions, trust funds are limited to four years. The insurance companies argue about logrolling and making substantive changes in law in a trust fund bill, but they miss the point. An appropriation bill may not contain other substantive law revisions, but this simply is not an appropriation bill under Article III, § 12.

The plaintiffs suggest that because of political pressure (Hurricane Andrew) all of the legislators wanted to pass the CAT Fund but that many legislators did not want to pass the "extraneous" reinsurance, funding and regulatory/accounting provisions also contained in Chapter 93-409. They thus argue that Ch. 93-409 constituted logrolling because the legislators were forced to approve the "extraneous" provisions just so they could pass the trust fund and look good in the eyes of the voters. There is no factual or legal basis for this argument. The unavailability of adequate reinsurance was one of the main problems in this entire insurance crisis -- reinsurance was hardly "extraneous" to the

creation of the Fund and the legislators were certainly not opposed to reinsurance reform.

The District Court's Opinions

The majority opinion in the First District Court of Appeal concludes that the creation of the CAT Fund was appropriately the subject of a separate bill for the purpose of creating the Fund and that this bill appropriately included the "creation of the trust fund and subjects directly connected therewith". The District Court encapsulated the insurance companies' arguments; that the trust fund could only be created in a bill which did not deal with any matters reasonably related to creation unless those matters were absolutely "indispensable to creation". According to the insurance companies and according to the dissent by Judge Webster, a very technical interpretation of the constitution was necessary and any matter in the bill which was not absolutely indispensable to creation alone would be a violation demanding that the entire legislation be voided. However, even Judge Webster's dissent resorted to interpretation of Art. III, § 19 to reach this result. The majority rejected this view stating: "this overly, restrictive interpretation is unreasonable and flies in the face of the obvious intent of Article III, § 19 of the Constitution."

The Court further stated:

> The intent of this provision is to make it more difficult to create trust funds (3/5ths vote requirement), and to make such funds more accountable by subjecting them to the detailed planning and appropriation process created in subsections (a) through (h) of Article III, § 19. A prohibition against including the details of purpose, administration, and funding of the trust fund from the bill creating the fund (required to be adopted by a 3/5th vote) would circumvent constitutional intent. That intent is to have heightened scrutiny prior to creating

> trust funds. If a skeletal bill was all that was allowed or required to create a trust fund, the details concerning purpose, administration, and funding would have to be adopted in a separate bill not subject to the 3/5ths voting requirement. This clearly was not the intent of the constitutional provision.

The District Court expressly found that "all of the provisions of Ch. 93-409 are related to the purpose, administration (including regulation) and funding (including ensuing solvency) of the trust fund."

The District Court's opinion also specifically deals with each of the four particular matters which the insurance companies characterized as extrinsic and thus offensive. These matters were: (1) payments to CAT Fund treated as approved reinsurance; (2) local governments empowered to issue bonds for benefit of CAT Fund; (3) SBA may authorize Department of Insurance to make emergency assessments for benefit of CAT Fund; and (4) retaliatory tax not applicable to payments to CAT Fund. The District Court dealt with each of these four items demonstrating quite clearly that each of them related directly to the creation, administration or funding of this trust fund. The insurance companies do not contest the direct relationships as found by the court -- instead they argue that the Fund could have been created without these four times and that as a result the statutory creation must be declared void.

The District Court noted as to (1) "approved reinsurance", that the purpose of the CAT Fund was to provide the functional equivalent of reinsurance for insurance providers in the event of a catastrophic hurricane. The court found that this provision directly related to the purpose of the act and that this accounting mechanism directly affected the burden placed upon insurance

companies required to make payments into the trust fund. Items (2) and (3) directly relate to the funding of the CAT Fund through bonds authorized by local governments and emergency assessments authorized by SBA and imposed by the Department of Insurance. For unknown reasons, the insurance companies argue in their brief before this Court that it is only "taxes and fees" which can make up the corpus of a trust. (Br.10,15). This unsupported statement is apparently counsel's own assumption. Indeed, the CAT Fund is made up of various payments from insurance companies, but there is certainly no reason why when necessary or in emergencies, bonds may not be issued for the benefit of the Fund along with emergency assessments on each insurer writing property and casualty insurance business in the state. There is not even a suggestion by the insurance companies as to why these financial sources can not be part of the funding mechanism for the CAT Fund. Since this is an EMERGENCY program, it is certainly reasonable and proper that the legislation creating the Fund deals with funding in case of an emergency shortfall and insufficiency in funds to meet contractual obligations. Item (4) on retaliatory taxes was held to clarify how to account for all payments to the Fund for tax purposes. The insurance companies argue that the Department of Revenue rather than the SBA must compute taxes. This argument in footnote 7 Br. p. 13 simply has nothing to do with Article III, § 19.

The majority opinion is well reasoned and entirely proper in its construction of the Constitution and the statute. It would be hypertechnical and lead to an absurd result to conclude that the framers of Article III, § 19 intended the creation of a trust fund

to be strictly and absolutely limited to a single sentence creating the fund without the first detail being included.

Subsection 3 of Ch. 93-409 begins with the words:

> (3) There is created the Florida Hurricane Catastrophe Fund to be administered by the State Board of Administration. Moneys in the fund may not be expended . . . except to pay obligations of the fund . . .

According to the insurance companies, these are the only words which could have constitutionally been included in this statute and even one extra word would render the entire statute void. There is simply no reason to believe that anyone every intended the Constitution to require such an illogical result.

The dissent adopts the "indispensable to creation" test and even goes so far as to deal with two provisions of Ch. 93-409 which were not raised by the insurance companies and thus were not mentioned in the majority opinion. On his own, Judge Webster finds fault with the portion of the bill making violations of the CAT Fund statute also violations of the Florida Insurance Code and further finds defective the requirement that an opinion be solicited from the federal tax authorities on the tax-exempt status of the revenue collected by the Fund. These two items were not raised in the appellants' brief in the District Court and even constitutional issues must be raised or they are waived. Granados v. Miller, 369 So. 2d 358, 360 (Fla. 4th DCA 1979). Judge Webster did not actually state that he would invalidate the entire statute merely because of a requirement for seeking an opinion from the Internal Revenue Service, but this would be the result if his view were carried to its logical conclusion.

In addition, Chapter 93-409, § 1(b) and (d) contained extensive factual findings on the "unprecedented levels of catastrophic insured losses in recent years" and the many insurance company insolvencies and insufficiencies as to reinsurance. These findings were the obvious reasons for creation of the fund but obviously they were not absolutely essential to or logically indispensible to creation. These findings did not render the statute void.

The Florida Legislature's Contemporaneous Construction and the "Indispensable to Creation" View

The 1993 Session was the first opportunity the Legislature had to interpret and follow the new Art. III, § 19(f). This Court has held that "the legislature's view of its constitutional authority is highly persuasive." Brown v. Firestone, 382 So. 2d 654, 671 (Fla. 1980). Further, "[a] relatively contemporaneous construction of the constitution by the legislature is strongly presumed to be correct." Brown v. Firestone and Greater Loretta Improvement Ass'n v. State ex rel. Boone, 234 So. 2d 665 (Fla. 1970).

The Legislature promptly construed Article III, § 19(f) by amending section 215.3207, Florida Statutes (1993), and the statute echoes the Constitution in regard to establishment of trust funds. Section 215.3207, as amended after the new constitutional provision, states:

> **Trust funds; establishment; criteria.**--All trust funds shall be established by the Legislature by a three-fifths vote of the membership of each house in a separate bill for that purpose only and shall be created by statutory language that specifies at least the following:

> (1) The name of the trust fund.
>
> (2) The agency or branch of government responsible for administering the trust fund.
>
> (3) The requirements or purposes which the trust fund is established to meet.
>
> (4) The sources of moneys which shall be credited to the trust fund or specific sources of receipts to be deposited into the trust fund.
>
> (5) A requirement that the trust fund shall be abolished not more than 4 years after the effective date of the act authorizing its creation, if such abolition is required by s. 19(f)(2), Art. III of the State Constitution.

This statute shows that the Legislature does not construe Article III, § 19(f)(1) anywhere near as narrowly as the plaintiffs suggest. Section 215.3207, requires the act creating a trust fund to include certain elements as a minimum. Additional elements may be proper based on the express content of the statute. The name of the trust fund must be stated although a fund could certainly be created without a name. In addition, the "agency" or "branch" of government responsible for administering it must be stated along with the "requirements or the purposes" which the fund is established to meet. The sources of money which shall be credited to or deposited into the trust fund and the date on which the fund will be abolished must also be included.

Thus, the separate bill creating a trust fund must describe the "purposes" of the fund and the "requirements" of the fund which is considerably broader than the mere creation of the fund. Further, the abolition date of the fund obviously has nothing to do with creation of the fund.

Both the petitioners and the dissent urge that section

215.3207 must be construed to require that every word in the statute creating a trust fund be logically "indispensable to creation" of that trust fund. There is nothing in the statute so stating, and in fact, the statute is a minimum rather than a maximum, stating that the statutory creation of a trust fund must specify "at least the following". Obviously, the Legislature felt that other matters in addition to the five listed subjects could be included. There is absolutely nothing in this statute which implies an "indispensable to creation" requirement. Indeed, it is rather clear from reviewing the statute that the Legislature could not possibly have intended that every word in the statutory language creating a trust fund be "indispensable to creation".

The most obvious is subparagraph (5) which requires language that a trust fund shall be abolished not more than four years after the effective date of its creation if such abolition is required by another portion of the Constitution. Obviously, creation and abolition are diametrically opposed concepts. If the Legislature construed the constitution to mean that only language "indispensable to creation" could be used, then the Legislature would not have required that additional language stating a required abolition date also be included. It is entirely reasonable to include both creation and abolition of a trust fund in the same bill. It is entirely unreasonable to constitutionally prohibit the abolition date from being included in the same piece of legislation that creates the trust fund. This would be the result if the insurance companies' view is accepted.

Obviously, this was not the view of the Florida Legislature

when they contemporaneously construed the constitutional provision in both passing Ch. 93-409 and in passing the amendments to section 215.3207 the following year. The Legislature did not limit the creation statute solely to creation language and there is simply no good reason why anyone would have wanted to do so.

Moreover, as noted, the Legislature was obviously aware of Article III, § 19(f)(1) when it enacted Chapter 93-409, and fully intended that Chapter 93-409 comply with the requirement of a separate bill for that purpose only. Thus, the enactment of Chapter 93-409 itself was also a relatively contemporaneous construction of § 19(f)(1).

At best, plaintiffs have advanced a very restrictive, and impractical, alternative construction of Article III, § 19(f)(1). However, "[w]here a constitutional provision is suspectable to more than one meaning, the meaning adopted by the legislature is conclusive." Vinales v. State, 394 So. 2d 993, 994 (Fla. 1981). Accordingly, this Court should follow the District Court's and the trial court's rulings and the Legislature's contemporaneous constructions of the new constitutional provision and reject the contrary view advanced by plaintiffs.

A court must always keep in mind the object sought to be accomplished in a constitutional amendment. State ex rel. Dade County v. Dickinson, 230 So. 2d 130 (Fla. 1969). Courts seek constructions which are reasonable and pragmatic rather than unreasonable or absurd. City of St. Petersburg v. Briley, Wild & Assoc., 239 So. 2d 817, 822 (Fla. 1970).

Article III, § 19 is a heightened 3/5ths vote requirement

making it more difficult to create a new trust fund and ensuring that new trust funds are not buried in larger bills or in bills creating more than one fund. Each fund must be enacted in a separate bill. The provision makes it more politically difficult to create a new trust fund but it does not require the Legislature to engage in useless or awkward steps as mere hurdles or illogical barriers. See Burch v. State, 558 So. 2d 1, 3 (Fla. 1990). Chapter 93-409 is five pages long and all of its provisions directly relate to and further the goals and purpose of the trust fund.

Again, the construction of the constitution and statute given by the majority is reasonable and the construction of the constitution advocated by the insurance companies and the dissent is unreasonable and would lead to an absurd result. This Court would even have to hold section 215.3207 unconstitutional because it requires the inclusion of language (abolition) having nothing to do with creation.

Severability

In any event and only as an alternative argument, if there were any single-subject defects in the CAT Fund legislation, the "extraneous" provisions as asserted by plaintiffs are obviously severable and could simply be deleted from the bill. Such an analysis is unnecessary because Chapter 93-409 is so clearly constitutional.

The severability argument was presented to the trial court and the District Court, but obviously not reached by either. Assuming, arguendo, that any portion of Ch. 93-409 violated the Constitution,

the court would have simply severed the unconstitutional provision rather than declaring the entire act void. As an example, the provision requiring payments to the Fund being treated as proper reinsurance premiums would have been severed and declared void. Thus in any event the Fund would continue to exist and only the supposedly extraneous provisions would be excised. SBA certainly does not suggest that this Court should resort to excising any part of the statute but the severability of statutes attacked as unconstitutional is a guiding principle of Florida law and clearly would be applicable here if necessary. See State ex rel. Boyd v. Green, 355 So. 2d 789, 794 (Fla. 1978); High Ridge Management Corp. v. State, 354 So. 2d 377, 380 (Fla. 1977); and Moreau v. Lewis, 648 So. 2d 124 (Fla. 1995), where this Supreme Court had no difficulty in excising a portion of the implementation bill which violated the single-subject provision of both Article III, § 6 and Article III, § 12.

CONCLUSION

The majority opinion below should be affirmed. Because of the attacks on the constitutionality of the essential governmental program protecting the citizens of the State of Florida and the insurance industry in general, the Governor and the other Cabinet officials comprising the SBA respectfully request that this Court issue a brief opinion publicly declaring the statute to be constitutional. This case has received some degree of notoriety and all doubts as to the constitutionality of the trust fund should be clearly settled.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to **Daniel C. Brown**, Katz, Kutter, et al., 106 East College Avenue, #1200, Post Office Box 1877, Tallahassee, FL 32302, dated this 5th day of January, 1996.

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