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SUPREME COURT OF FLORIDA

AMERICAN BANKERS INSURANCE COMPANY, ET AL.,

Petitioners,

v.

LAWTON CHILES, ETC., ET AL.,

Respondents.

______________________________/

CASE NO. 86,682

District Court of Appeal, 1st District - No. 94-3111

INITIAL BRIEF

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STATEMENT OF THE CASE

Petitioners are foreign and domestic insurers which have written insurance in Florida for some time, including personal lines property insurance (largely homeowners, or residential, insurance). Following Hurricane Andrew, Florida first passed a six-month moratorium on the cancellation and non-renewal of homeowners insurance policies then in effect, Ch. 93-401, *Laws of Fla.*, though such contracts were one-year contracts non-renewable on 45 days notice. § 627.4133, *Fla. Stat. (1993)*. Florida next substantially extended that moratorium. § 627.7013, Florida Statutes (1994 Supp.); § 19, Ch. 93-410, *Laws of Fla*. Finally, Florida enacted Ch. 93-409, Laws of Florida, the subject of this appeal.

Chapter 93-409 creates the Florida Hurricane Catastrophe Trust Fund ["the Fund"], and compels Petitioners to accept catastrophe reinsurance coverage for hurricane losses from that fund and to pay unbargained-for amounts for it.

Petitioners filed a several-count complaint in the Circuit Court of the Second Judicial Circuit, Leon County, against the cabinet members who comprise the State Board of Administration ["SBA"], which administers the Fund. Count IV sought a declaratory judgment that Chapter 93-409 violates the single-subject requirement of Article III, § 19(f)(1), Florida Constitution. On cross motions for summary judgment as to that count, the circuit court declared that Chapter 93-409 did not violate Article III, § 19(f)(1), and entered summary judgment for SBA. Petitioners

appealed that judgment under *Fla. R. App. P.* 9.110(k) to the First District Court of Appeal. In an opinion from which Judge Webster dissented, that court affirmed the trial court. App. 1. However, the First District certified the question of the proper interpretation of Article III, § 19(f)(1) as one of great public importance. App. 2. Petitioners timely filed notice to invoke this Court's jurisdiction under Article V, § 3(b)(4), Florida Constitution. This Court entered its order on October 23, 1995, postponing a jurisdictional decision to the merits and directing a briefing schedule.

STATEMENT OF THE FACTS

Chapter 93-409, Laws of Florida, creates the Florida Hurricane Catastrophe Fund ["the Fund"]. The law requires each insurer writing personal lines or commercial property insurance policies covering property in Florida to enter into a "contract" with SBA for catastrophe reinsurance through the Fund against hurricane losses. Entering into this "contract" is made a "condition of doing business in this state." § 215.555(4)(a), *Fla. Stat.* (1994 Supp.). Failure or refusal to enter into the "contract" or to pay "reimbursement premium" set unilaterally by the SBA is made a violation of the Florida Insurance Code. § 215.555(5),(10), *Fla. Stat.* (1994 Supp.).

The assessment, or "reimbursement premium," demanded under § 215.555, Florida Statutes (1994 Supp.), is based upon the insured value of policies in each zip code. Put another way, the assessment is based on the insurer's geographic distribution of

property insurance risks, and actuarial estimates of the hurricane loss exposure (and apportionment of other expenses), given the value and geographic concentration of those risks.

Here § 627.7013, Florida Statutes (1994 Supp.) - the moratorium extension law - comes into play. The combined effect of Chapter 93-401, Laws of Florida (the first, six-month moratorium on non-renewal of homeowners policies), of § 627.7013, Florida Statutes (1994 Supp.) (the moratorium extension), and of § 215.555 (1994 Supp.), is apparent. Petitioners are locked in to substantially the books of business they wrote prior to August, 1992; they are forbidden to exercise contractual non-renewal rights to substantially change their risk exposure; and they are then required to remit unbargained-for assessments for non-consensual "coverage" from the Fund based on those coerced books of business.[1] Insurers are required to accept "coverage" and to pay "premium" even though they have adequate reinsurance coverage and thus do not want or need Fund coverage for hurricane losses.

In addition to creating the Fund (providing for its purpose, appointing its administrator and delineating the taxes or fees to fund it), Chapter 93-409 amends various provisions of substantive law. Those amendments were not required in order to delineate the Fund's corpus, the permissible use of the Fund's resources or to appoint and empower the Fund's administrator. The law amends §

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[1]The Fund is not obligated to provide coverage to an insurer unless losses from hurricanes exceed 1.5 times the insurer's gross direct written premium from covered policies for the prior year. § 215.555(4), *Fla. Stat.* (1994 Supp.).

624.5091, Florida Statutes, governing the imposition of retaliatory tax on foreign insurers. § 4, Ch. 93-409, *Laws of Fla.* The law deems the Fund's coverage to constitute "approved reinsurance for all accounting and regulatory purposes," § 215.555(5)(d), *Fla. Stat.* (1994 Supp.), though the Fund provides "coverage" only in the event of hurricane losses.[2] The law makes "any violation" of § 215.555 a violation of the Insurance Code, § 215.555(10), *Fla. Stat.* (1994 Supp.) It thus substantially expands the powers of the Department of Insurance, allowing that department to discipline insurers for matters arising out of disputes between insurers and the SBA in connection with the Fund.[3] The law also expands the bond-issuance powers of municipalities and counties. § 215.555(6)(b), *Fla. Stat.*(1994 Supp.).

Article III, section 19(f), of the Florida Constitution took effect in 1992, and was in effect when Chapter 93-409 became law. The amendment was among several proposed constitutional amendments drafted and recommended by the Taxation and Budget Reform Commission. Subsection (1) of Article III, section 19(f) provides:

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[2]The act therefore modifies the Department of Insurance's regulatory power over insurers in the most fundamental regulatory function: the evaluation of insurer financial health and solvency. It also implicates issues of federalism, by introducing a scheme where Florida insurers may be favored over out-of-state insurers, as discussed below at pp. 22-24.

[3]Thus, if an insurer fails to execute a contract, to timely pay the assessment which SBA determines is due for its particular book of business, to timely provide SBA with information concerning its insured values for the previous year, to accept and timely pay SBA-determined emergency assessments, or to remit overpayments asserted by SBA, the Department of Insurance is authorized by Chapter 93-409 to revoke or suspend the insurer's license or to impose fines and penalties. §§ 624.418, 624.419, *Fla. Stat.*

> 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.

Shortly after adoption of that constitutional provision the Legislature passed Chapter 92-142, Laws of Florida. Section 17 of that act created § 215.3207, Florida Statutes, which provided:

> All trust funds established by the Legislature after January 1, 1993, 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) The purposes, programs, or services for which the administering agency or branch of government may expend moneys from the trust fund pursuant to specific appropriations.
>
> (6) A requirement that the trust fund shall be abolished pursuant to Sec. 215.3206.[4]

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[4] §3, Ch. 93-159, Laws of Florida, and § 1, Ch. 94-67, Laws of Florida amended § 215.3207, Florida Statutes, but did not change the substance of § 215.3207, as created by Ch. 92-142, Laws of Florida.

QUESTION PRESENTED

The First District Court of Appeal certified the following question to be of great public importance meriting this Court's review:

> 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?

Petitioners submit that the question is more succinctly put as follows:

> In view of Article III, section 19(f)(1), are the provisions of a bill establishing a trust fund limited to those matters logically indispensable to the trust fund's creation?

If so, Chapter 93-409 runs afoul of Article III, § 19(f)(1).

SUMMARY OF ARGUMENT

Article III, § 19(f)(1), Florida Constitution, is precise and unambiguous. It provides that no trust fund may be created by law except "in a separate bill for that purpose only." Its language plainly intends that bills creating trust funds shall be limited only to that narrow purpose. Provisions not necessary to the creation of a trust fund, provisions other than the essential steps necessary to create the fund, may not be included.

There is no uncertainty about the matters essential to create a trust fund. The fund must be identified; its purposes must be stated; taxes or fees constituting its corpus must be identified; and its administrator must be appointed and empowered. The

legislature's contemporaneous construction of Article III, § 19(f)(1) is consistent with that ordinary understanding.

Chapter 93-409, Laws of Florida, violates the plain meaning of Article III, § 19(f)(1). In addition to matters necessary to create the Fund, the law amends the Florida retaliatory tax. The retaliatory tax is not a source of taxes or fees for the Fund's corpus, and the retaliatory tax serves a function wholly unrelated to the limited purpose of creating the Fund. Chapter 93-409 also amends the regulatory powers of the Department of Insurance, both limiting and expanding those powers. The Department of Insurance is not designated as the Fund administrator. The expansion and constriction of DOI powers accomplished by provisions of Chapter 93-409 was not necessary to the creation of the Fund. Nor was the provision of Chapter 93-409 which empowers local governments to issue bonds pledging the defined revenue source of the Fund as security. Additionally, the provision of Chapter 93-409 which legislatively deems Fund coverage to be "approved reinsurance for all accounting and regulatory purposes" was unnecessary to the creation of the Fund.

Each of those extraneous provisions has far-ranging consequences which are wholly collateral to the limited objective of creating the Fund. Article III, § 19(f)(1) prevents a bill, ostensibly only creating a trust fund, from becoming a vehicle for such far-reaching, collateral measures.

The majority opinion placed a judicial gloss on Article III, § 19(f)(1) which is opposed to its plain meaning, and upheld

Chapter 93-409 on the basis of that judicial gloss. That gloss is incorrect; and the result below is incorrect.

If the ordinary meaning of Article III, § 19(f)(1)'s words were not enough to show the invalidity of Chapter 93-409, a study of constitutional "single-subject" provisions preceding Article III, § 19(f)(1) shows the lower court's error. Article III, § 19(f)(1) was devised with the benefit numerous decisions construing Article III, § 6, Article III, § 12, and Article XI, § 3, Florida Constitution. Its phraseology is more restrictive and precise than any of those preceding sections. It employs a more stringent test that any of them. Yet, the lower court's gloss on Article III, § 19(f)(1) is as lenient and permissive as the test of Article III, § 6.

If it were proper to disregard Article III, § 19(f)(1)'s clear language and to search for guidance in other "single-subject" provisions, Article III, § 12 comes closest to Article III, § 19(f)(1). Decisions under Article III, § 12 establish that it prohibits altering the state's substantive law in bills making provision for general appropriations. Article III, § 19(f)(1) manifestly imposes the same proscription on bills creating trust funds. Yet, Chapter 93-409 amends the substantive law of Florida regarding taxation, the regulatory power of DOI, and the bonding powers of local government.

Moreover, Chapter 93-409 would fail to withstand scrutiny even under the comparatively more relaxed "direct connection" test articulated in Article XI, § 3. Decisions under that article

conclude, for instance, that limits on taxation and limits on user fees combined in the same proposal do not satisfy the test of "but one subject and matter directly connected therewith." Decisions under Article XI, § 3 emphasize the danger of allowing distinct issues with far-reaching collateral effects to be grouped together for a single vote. They emphasize that the purpose of the restriction, "but one subject and matter directly connected therewith," is to prevent amalgamating topics with broad collateral effects in one proposal. The judiciary must give even greater deference to such considerations under the more rigorous language of Article III, § 19(f)(1).

ARGUMENT

I. CHAPTER 93-409, LAWS OF FLORIDA, VIOLATES THE CLEAR AND PRECISE LANGUAGE OF ARTICLE III, § 19(f)(1).

As Judge Webster noted in his dissent below, there is nothing unclear, imprecise or ambiguous in the language of Article III, § 19(f)(1). The phrase "in a separate bill for that purpose only" cannot possibly be read to refer to anything other than the creation of a trust fund. To be constitutionally valid, provisions of such a bill may deal with no other purpose.

Judge Webster correctly noted that the only possible room for discussion relates to what must necessarily be included in such a bill in order to create at trust fund. On that question, contemporaneous construction by the legislature is entitled to considerable weight, unless manifestly erroneous. *See, e.g., State v. Kaufman*, 430 So.2d 904 (Fla. 1983). The legislature in fact

spoke on that point immediately after Article III, § 19(f)(1) was adopted. The legislature enacted § 215.3207, Florida Statutes, by Chapter 92-142, Laws of Florida. It listed six provisions which such bills must contain: (1) the fund's name, (2) the agency to administer the fund, (3) the purposes the fund is established to meet, (4) identification of the sources of monies to be deposited or credited to the fund, (5) a delineation of the purposes, programs, or services for which the administering agency may expend moneys from the trust fund, and (6) a requirement that the fund be abolished consistently with the constitutional provision. That contemporaneous legislative construction is entirely compatible with the plain language of the constitutional article and with the common understanding of what is entailed in creating a trust fund: identifying the fund, specifying its purpose and the permissible uses of its corpus, delineating the taxes or fees committed to the corpus, and appointing a trustee or administrator. *See generally* 56 *Fla. Jur. 2d*, "Trusts," § 6 (Lawyers Coop., 1985).[5] In short, when the legislature contemporaneously construed Article III, § 19(f)(1), it recognized, consistently with the plain language of

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[5]Section 215.3207, Florida Statutes, as enacted by Chapter 92-142, includes the phrase "specifies at least the following" immediately before delineating the six provisions discussed above. As the dissent below noted, that phrase is entirely consistent with the clear language of Article III, § 19(f)(1), and must be read merely as a legislative recognition that there might be other matter indispensable to the creation of some particular fund. Reading that phrase more broadly, as encompassing all items that relate to the purpose of the fund, *Service Ins. Co. v. The Honorable Lawton Chiles*, Case No. 94-3111 (Fla. 1st DCA 1995) (App. 2), would be manifestly erroneous, given the precise and restrictive language of Article III, § 19(f)(1).

the Constitution, that the permissible provisions of such a bill are limited to matters indispensable to <u>the creation</u> of the fund.

Chapter 93-409 includes provisions which manifestly are not necessary to the purpose of creating the Fund. Instead, those provisions pertain to collateral matters having no bearing on appointing the Fund's administrator, or on defining the Fund's purpose and permissible expenditures, or on designating the taxes or fees which will comprise its corpus.

Section 4, Chapter 93-409, Florida Statutes, amended Florida's insurance retaliatory tax statute, § 624.5091, Florida Statutes. The retaliatory tax has no bearing on the purpose of creating the Fund. "The common purpose of [retaliatory tax] legislation in the several states has been to discourage any state from imposing discriminatory taxes or other burdens upon out-of-state companies." *Western & So. Insurance Co. v. State Bd. of Equalization of California*, 451 U.S. 648, 673, 101 S.Ct. 2070, 68 L.Ed. 2d 514 (1981), *quoting Atlantic Ins. Co. v. State Bd. of Equalization*, 255 Cal. App. 2d, at 4, 62 Cal. Rptr., at 786. *See also Gallagher v. Motors Insurance Co.*, 605 So.2d 62 (Fla. 1992). It is a tax which is gauged by excessive or discriminatory financial obligations imposed on insurers by other states. It is not intended to be a revenue-generating measure. *Id.*

The amendment to the insurance retaliatory tax contained in Chapter 93-409 is designed to assure that Florida's retaliatory tax collections do not diminish as a result of Florida imposing Fund

assessments on insurers.[6] Retaliatory taxes are not earmarked for the Fund. Maintaining Florida's retaliatory tax revenue stream was not necessary to creating the Fund.

The analysis in the majority opinion below concerning the retaliatory tax provision in Chapter 93-409 falls far wide of the mark:

> [S]ection 4 [Chapter 93-409] ... amends section 624.5091, Florida Statutes, to provide that reimbursement premiums to the CAT Fund shall be excluded from the calculation of the retaliatory tax .... This provision clarifies how, for tax purposes, to appropriately account for premiums paid to the fund. Resolving the question of whether fund premiums are subject to this tax is a policy decision of the legislature."

App. 1, at p. 11. The operative question under Article III, § 19(f)(1) is not whether the retaliatory tax amendment is properly a policy decision of the legislature; nor even whether that policy decision relates, in a general way, to the subject of the Fund. The

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[6]Chapter 93-409 provides that payments to the Fund are to be excluded in determining retaliatory tax. Retaliatory tax is measured by, and is generally equal to, the greater aggregate burden imposed by another state compared to Florida's aggregate burden on similar insurers. In a simplified example, if Florida's financial exactions on an insurer writing $100,000 of premium in Florida are $100.00, but the insurer's state of domicile imposes aggregate exactions of $150.00 upon a similar insurer writing that premium volume in that state, then Florida's retaliatory tax would be $50.00 [$150.00 (insurer's state of domicile) - $100.00 (Florida)].

Thus, if payments by insurers to Florida's hurricane catastrophe trust fund were <u>included</u> on the Florida side of this comparative "ledger," Florida's retaliatory tax collections would diminish compared to previous levels. Chapter 93-409 <u>excludes</u> such substantial assessments from the Florida side of the "ledger," to preserve the *status quo ante* of Florida's retaliatory tax revenues.

question is whether that provision was necessary to the limited purpose of creating the Fund. Unquestionably, it was not.[7]

Section 1(5)(d) of Chapter 93-409, enacting § 215.555(5)(d), Fla. Stat. (1994 Supp.), likewise is not logically indispensable to creating the Fund. It provides as follows:

> All premiums paid to the fund under reimbursement contracts shall be treated as premium for approved reinsurance for all accounting and regulatory purposes.

Chapter 93-409 excuses reinsurance arrangements with the Fund from normal regulatory review of insurers' financial condition by insurance officials. *See, e.g.*, §624.410, *Fla. Stat.*[8] By exempting reinsurance payments and arrangements between an insurance company

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[7]The majority's statement that this provision "clarifies how, for tax purposes, to appropriately account for premiums paid to the fund" demonstrates a fundamental misconception of Article III, § 19(f)(1); and it demonstrates the impermissible elasticity of the construction placed on that constitutional provision by the majority below. The offending statutory provision does not concern how to account to SBA - a subject which might relate, in a general sense, to the fund. (Even that, however, is not the test under this constitutional provision.) Chapter 93-409's amendment of the retaliatory tax is even further afield. It relates not to accounting to SBA for premiums; but, instead, to how the Department of Revenue shall treat SBA payments in computing retaliatory tax.

[8]Section 624.410 calls for Department of Insurance review of the reinsurance arrangements by which an insurer takes credit on its statutory accounting statements against liabilities. That usually-required evaluation affects the determination of the financial condition of an insurance company and its compliance with minimum equity and other financial tests that an insurer must meet to continue to transact insurance. Regulatory review of reinsurance arrangements imposes a safeguard, requiring that insurance regulators be satisfied that particular reinsurance in fact reduces a particular insurer's risks in the amount of credit taken on the company's balance sheet. This is a protection for insurance buyers, helping to assure that the companies from which they buy are financially secure enough to stand behind policy obligations in the long run. Such review is a common feature of insurance regulation in other jurisdictions, as well.

and the Fund from ordinary regulatory review, the law dramatically alters the powers of the Department of Insurance concerning the financial soundness of insurance companies. Moreover, it has collateral implications for issues of federalism reaching far beyond the mere creation of the Fund. Such collateral implications have lead members of this Court to conclude, for instance, that ballot initiatives violated the less rigorous single-subject requirements of Article XI § 3. *See* discussion at pp. 21-25, below.

Similarly, § 215.555(10), Florida Statutes, is not indispensable to the limited purpose of creating the Fund. It provides that "[a]ny violation of this section [215.555] constitutes a violation of the Insurance Code." That provision does not delineate the purposes of the Fund or the permissible expenditures of the Fund corpus. It does not earmark taxes or fees for the Fund. It does not appoint the Fund's administrator, or delineate the powers of SBA as Fund administrator. Rather, it expands the powers of the Department of Insurance, an agency not appointed the Fund administrator. It empowers that agency to insert its regulatory power into disputes which might arise between the Fund administrator and insurers, subjecting insurers to the threat of license revocation or suspension and regulatory fines arising from controversies between insurers and SBA over the Fund's operations. Here, again, the question is not whether that is a policy decision the legislature may make; nor whether it relates generally to the Fund. Rather, the constitutional inquiry under

Article III, § 19(f)(1) is whether that provision is necessary to the limited purpose of creating the Fund. It is not.

Nor is § 215.555(6)(b), Florida Statutes (1994 Supp.), enacted by Chapter 93-409, logically indispensable to the purpose of creating the Fund. It provides:

> The governing body of any county or municipality may issue bonds as defined in Sec. 125.013 or Sec. 166.101 from time to time to fund an assistance program, in conjunction with the Florida Hurricane Catastrophe Fund, for the purpose of meeting the reimbursement obligations of the fund. The issuance of such bonds is for the public purpose of ensuring that policyholders located within the county or municipality are able to recover under property insurance policies after a covered event. Revenue bonds may not be issued until validated pursuant to the provisions of chapter 75. The county or municipality shall enter into such contracts with the fund as are necessary to carry out this section. Any bonds issued under this section shall be payable from and secured by moneys received by the fund under subsection (5), and assigned and pledged to or on behalf of the county or municipality for the benefit of the holders of such bonds. The funds, credit, property, and taxing power of the state or of the county or municipality shall not be pledged for the payment of such bonds.

That provision is not necessary to appointing and empowering the Fund administrator or to specifying the Fund's purpose. Nor, upon scrutiny, is it limited to earmarking taxes or fees for the Fund. It does not provide merely that the Fund may receive revenues from local bonds, to the extent that such bonds may lawfully be issued pursuant to law. It provides, instead, for expanded local government bonding power. The revenue source of the Fund remains assessments on insurers. Section 215.555(6) merely enables local governments to hypothecate that funding source. Its purpose is not the "purpose only" of creating the Fund. In order to bring the Fund into being, it was not logically necessary to

provide that local governments may issue bonds secured by the corpus of the Fund.

In sum, each of the foregoing provisions is "clearly unrelated in any meaningful sense to the creation of the Fund." *Service Ins. Co. v. The Honorable Lawton Chiles*, Case No. 94-3111 (Fla. 1st DCA 1995) (App. 1, p. 17) (WEBSTER, J., dissenting).

II. THE LOWER COURT'S GLOSS ON ARTICLE III, § 19(f)(1) CONTRAVENES ITS PLAIN LANGUAGE AND IGNORES ITS CONSTITUTIONAL ANTECEDENTS.

The majority opinion below interpreted Article III, § 19(f)(1) loosely, in a manner its clear language will not permit. In the majority's view, the constitutional provision permits all items which generally relate to the purpose, administration, and funding of a trust fund to be included in a bill creating the fund. The majority views the test as only one of "reasonably relating to the creation" of a trust fund. *Service Ins. Co., et al. v. The Honorable Lawton Chiles*, Case No. 94-3111 (Fla. 1st DCA 1995) (App. 1, p. 7). *See also id.*, p. 11. *But see, id.*, p.7-8, n.1 (mentioning a test of "directly connected" with creation of the fund.) Regardless of the majority's wording - direct connection or reasonable relation - the gloss which the majority below affixed to Article III, § 19(f)(1) is plainly inconsistent with its clear text.

The language of Article III, section 19(f)(1) is plain and unambiguous, and should be given its ordinary meaning. It does not provide for a test of "reasonable relation," nor of "direct connection." Instead it provides that no trust fund may be created

except "in a separate bill for that purpose only." There is no room in its terms for the sort of judicial interlineation in which the majority below engaged. *See, e.g., City of Jacksonville v. Continental Can Co.*, 113 Fla. 168, 172-73, 151 So. 488, 489-90 (1933).

Moreover, the view espoused by the majority below ignores the evolution and interpretation of precursing "single-subject" provisions. It fails to take into account the constitutional history preceding Article III, § 19(f)(1).

Earlier "single-subject" provisions include Article III, § 6, Florida Constitution. Members of the Commission are presumed to have been aware of the language of Article III, § 6 and of the courts' generally lenient interpretation of its language. *Jenkins v. State*, 385 So.2d 1356, 1357 (Fla. 1980) ("... constitutional amendment must be viewed in light of the historical development of the decisional law extant at the time of its adoption and the intent of the framers and adopters.").[9] Similarly, Commissioners had the experience of Article III, § 12 and Article XI, § 3, Florida Constitution, to guide them. *See, e.g., Brown v. Firestone*, 382 So.2d 654 (Fla. 1980); *Florida Defenders of the Environment, Inc. v. Graham*, 462 So.2d 59 (Fla. 1st DCA 1984), *aff'd sub nom. City of North Miami v. Florida Defenders of the Environment*, 481 So.2d 1196 (Fla. 1986); *Fine v. Firestone*, 448 So.2d 984, 988-89 (Fla. 1984) (The "properly connected therewith" language of Art.

[9]Examples of such lenient interpretation of Article III, § 6, include *Burch v. State*, 558 So. 2d 1 (Fla. 1990); *Smith v. Department of Insurance*, 507 So. 2d 1080 (Fla. 1987).

III, § 6, is broader than the "directly connected therewith" language in Art. XI, § 3.).

With the benefit of that constitutional and judicial history to guide them, the Commissioners carefully chose more restrictive words for Article III, § 19(f)(1). Instead of the phraseology "one subject and matters properly connected therewith" (Article III, § 6), or "but one subject and matter directly connected therewith" (Article XI, § 3), the framers of this provision purposefully chose the language "in a separate bill for that purpose only." Art. III, § 19(f)(1), *Fla. Const.* In light of that constitutional and judicial record, the drafters of Article III, § 19(f)(1) intended to create a stricter limitation on the power of the Legislature to amalgamate matters in one bill than the limitations imposed by Article III, § 6, and Article XI, § 3.

Yet the majority below embossed an interpretation on Article III, § 19(f)(1) as lenient as the test of Article III, § 6, Florida Constitution. That judicial gloss is error.

III. THE LOWER COURT'S GLOSS ON ARTICLE III, § 19(f)(1) IS INCOMPATIBLE WITH GUIDING PRINCIPLES IN THIS COURT'S DECISIONS UNDER ARTICLE III, § 12, THE MOST ANALOGOUS PRECURSOR OF ARTICLE III, § 19(f)(1).

Article III, § 19(f)(1) is clear and distinctive. If guidance were nonetheless required as to its meaning, then decisions concerning Article III, § 12 are most instructive, because, in context and phraseology, Article III, § 12 is closest to Article III, § 19(f)(1), among other "single-subject" clauses in the Florida Constitution.

Decisions under Article III, § 12, underscore a fundamental principle: Laws making general appropriations shall not be permitted to serve as vehicles to amend the substantive law of Florida. *City of North Miami v. Florida Defenders of the Environment*, 481 So.2d 1196 (Fla. 1986); *Department of Education v. Lewis*, 416 So.2d 455 (Fla. 1982); *Gindl v. Department of Education*, 396 So.2d 1105, 1106 (Fla.1979) *Brown v. Firestone*, 382 So.2d 654 (Fla.1980). Article III, § 19(f)(1) manifestly aims to impose the same discipline in connection with bills creating trust funds, and does so with even more careful and more restrictive language.

Chapter 93-409 amends the retaliatory tax, the regulatory powers of the Department of Insurance (both subtracting from and adding to them) and the powers of local government - matters of substantive law, one and all. If the unadorned language of Article III, § 19(f)(1) were not enough to show Chapter 93-409's invalidity, a review of the similar policy of Article III, § 12 settles the question.

IV. THE LOWER COURT'S GLOSS ON ARTICLE III, § 19(f)(1) IS INCOMPATIBLE WITH PRINCIPLES IN THIS COURT'S DECISIONS UNDER ARTICLE XI, § 3.

Article III, § 19(f)(1) is unmistakably more restrictive than Article XI, § 3. Article III, § 19(f)(1) provides:

> No trust fund of the State of Florida .... may be created by law without a three-fifths (3/5) vote .... in .... a separate bill for that purpose only.

Article XI, § 3 provides:

> The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that any such revision

> or amendment .... shall embrace but one subject and matter directly connected therewith.

Even though Article III, § 19(f)(1) is stricter, Chapter 93-409 would fail to pass inspection even under Article XI, § 3's more relaxed "directly connected" requirement. It therefore cannot withstand scrutiny under Article III, § 19(f)(1).

In *Fine v. Firestone*, 448 So.2d 984 (Fla. 1984), the Court invalidated a ballot initiative proposing revenue limitations because it violated Article XI, § 3, as it then read. The initiative was proffered as dealing with "one subject" - limiting revenue increases for government. The Court nevertheless found that it had three distinct purposes: to limit tax revenues, to limit user-fee revenues and to limit capital borrowing. The Court found the initiative to be;

> .... clearly and conclusively defective because it fails to meet the intent and purpose of the single-subject requirement of article XI, section 3 of the Florida Constitution. If the single-subject requirement means anything, it must apply in this instance. The purpose of the single-subject requirement is to allow the citizens to vote on singular changes in our government that are identified in the proposal and to avoid voters having to accept part of a proposal which they oppose in order to obtain a change which they support.

Id. at 922-33. *Accord, In re Advisory Opinion to the Attorney General re Tax Limitation*, 644 So.2d, 486 (Fla. 1994). *See also Evans v. Firestone*, 457 So.2d 1351 (Fla. 1984).

Both in *Evans v. Firestone, supra*, and in *In re Advisory Opinion to the Attorney General - Restricts Laws Related to Discrimination*, 632 So.2d 1018 (Fla. 1994), the Court perceived the obligation "look beyond the surface" of the subject as

characterized, 632 So.2d at 1019, and to look, instead, to the intent and purpose of the single-subject limitation in deciding constitutional compliance. The Court recognized that "enfolding disparate subjects within the cloak of a broad generality does not satisfy the single-subject requirement [of Article XI, § 3]." *Evans, supra*, at 1353. The fundamental purpose of the test under that provision is "to avoid voters having to accept part of a proposal which they oppose in order to obtain a change which they support." *Fine v. Firestone, supra*, at 933.

The majority opinion below failed to give due regard to those fundamental principles in connection with Article III, § 19(f)(1), even if it could be said that its test is one of "direct connection" to the purpose of creating the Fund, analogous to Article XI, § 3. The decision below countenances the very logrolling which Article III, § 19(f)(1) precludes. The bill included the disparate topics of general taxation, Department of Insurance regulatory powers, and municipal and county bonding in a bill creating a politically imperative trust fund. The bill was a vehicle which pressured individual law makers to accept such provisions in order to achieve the politically expedient and narrow objective of creating the Fund. *See* discussion below at pp. 26-27.

Justice KOGAN's concurrence in *In re Advisory Opinion - Laws Related to Discrimination, supra*, exposes the underlying danger which restrictive provisions such as Article III, § 19(f)(1), and Article XI, §3, guard against. Matters which are generally related, in a sense meeting the relaxed standard of Article III, §

6, nevertheless may have wide-ranging collateral effects. Those collateral effects are often too diverse and too important to obscure debate upon them, and to limit choice among them, by amalgamation in a measure whose primary objective is narrow and where debate is likely to be limited. The restrictive test of Article XI, § 3, and the more restrictive test of Article III, § 19(f)(1), are intended to ferret out such dangers.

Yet, Chapter 93-409 is an example of the very danger which those increasingly strict provisions are designed to guard against. To appreciate that, one need only examine the collateral effects and consequences of this provision of the law:

> All premiums paid to the fund under reimbursement contracts shall be treated as premium for approved reinsurance for all accounting and regulatory purposes.

§ 215.555(5)(d), *Fla. Stat.* (1994 Supp.).

As we noted above, that provision is not necessary or indispensable in order to create the Fund. Yet, it has far-reaching implications.

It purports to legislatively deem the Fund's coverage to be "approved reinsurance" for all insurance regulatory purposes. The Florida Legislature may conclusively bind the Florida Department of Insurance by that legislative fiat. However, the states-of-domicile of foreign insurers have the final power to determine the adequacy of reinsurance coverage as to their insurers. Other states make the determination, for their insurers, whether Fund coverage will be regarded as "approved reinsurance" for regulatory purposes. *See, generally, Gallagher v. Motors*

Insurance Co., 605 So.2d 62, 69 (Fla. 1992). The Florida Legislature cannot bind them on the subject.

The amount of insurance a company may write is limited in virtually every jurisdiction by a ratio of premiums to equity, or "surplus," of the company. The equity of a company is reduced by its liabilities. Reinsurance, if approved, is a credit against liabilities, increasing equity, and thus increasing the amount of insurance a company may underwrite. If reinsurance coverage is not approved by the regulator, the company's capacity to compete is reduced, since its liabilities rise and its equity is, in turn, reduced.

Thus, under this provision of Chapter 93-409 all Florida domestic insurers are assured that reinsurance through the Fund will be approved by their domiciliary state, since the law binds the Florida Department of Insurance. But no foreign insurer, operating here and competing with Florida insurers, has that assurance. Yet, by virtue of Chapter 93-409, foreign insurers must participate in the Fund. Further, by virtue of § 627.7013, Florida Statutes (1994 Supp.), foreign insurers are compelled to continue writing homeowners insurance here. That disparity, and its disadvantage to foreign insurers in Florida, has profound implications under principles of non-discrimination inhering in this nation's federalism. *See, e.g., Metropolitan Life Ins. Co. v. Ward*, 470 U.S. 869, 105 S.Ct. 1676, 84 L.Ed.2d 751 (1985); *Gallagher v. Motors Insurance Co., supra.*

Chapter 93-409's amendment of the insurance retaliatory tax statute also carries a similar potential for broad collateral consequences. Before Chapter 93-409, Florida's retaliatory tax statute did not exclude special purpose assessments for property insurance when calculating aggregate Florida burdens on insurers.[10] Florida's aggregate burden is compared to the aggregate burden imposed by a foreign insurer's home state to arrive at Florida's retaliatory tax. Section 624.5091(3), Florida Statutes (1993), excluded special purpose assessments only for insurance other than property insurance, and was similar in that respect to the statutes of many other states.[11] Under Chapter 93-409, however, though they are imposed on property insurance, Fund assessments are now excluded from Florida's retaliatory tax computation, in addition to excluding special assessments on non-property insurance. Chapter 93-409 thus fundamentally changes the rules for retaliatory tax, and invites counter-measures by other states.

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[10]Section 624.5091, Florida Statutes (1993) provided:

> (3) This section does not apply as to .... special purpose obligations or assessments imposed in connection with particular kinds of insurance other than property insurance ....[emphasis added].

However, as amended by Chapter 93-409, the excluded assessments extend to "reimbursement premiums paid to the Florida Hurricane Catastrophe Fund ....", as well.

[11]*See* Alaska Stat. §21.09.270; Ark. Stat. Ann. §23-63-102; West's Ann. Cal. Ins. Code §685.1; Del. Code Ann. Title 18, § 532; Ga. Code Ann. §33-3-26; Idaho Code §41-340; Ky. Rev. Stat. Ann. §304.3-270; Me. Rev. Stat. Ann. Title 24-A, §428; Md. Tax Code Ann., Art. 48A, §61; Miss. Code Ann. §27-15-125; Mont. Code Ann. §33-2-709; Nev. Rev. Stat. §680A.330; Or. Rev. Stat. §731.854; S.D. Cod. Laws §58-6-71; Wyo. Stat. §26-3-130.

Accordingly, Chapter 93-409 would be void even under a "direct connection" test, akin to that articulated in Article XI, § 3. The Constitution will not permit an all-or-none choice on matters with such far-reaching consequences, but with only a loose connection the ostensible, narrow object. Even more so under the language of Article III, § 19(f)(1), those considerations mandate Chapter 93-409's invalidity.

V. CHAPTER 93-409, LAWS OF FLORIDA, CONSTITUTES THE VERY SORT OF LOGROLLING WHICH ARTICLE III, § 19(f)(1) WAS DESIGNED TO PROHIBIT.

Hurricane Andrew spawned a property insurance crisis in Florida. Legislators, under enormous pressure, were anxious to "ameliorate .... dangers to the state's economy and to the public health, safety, and welfare." Ch. 93-409, § 1(1)(e), Laws of Fla. (findings and purpose) (codified at § 215.555(1)(e), Fla. Stat. (1994 Supp.)). Legislators were under enormous pressure to do something to maintain "a viable and orderly private sector market for property insurance in this state." Id. at § 1(1)(a), Ch. 93-409, Laws of Fla. [codified at § 215.555(1)(a), Fla. Stat. (1994 Supp.)].

The Property and Reinsurance Study Commission, established to develop solutions for the market disruption, recommended creation of a state-run hurricane catastrophe fund as a necessary step in abating the disruption. Thus, when the legislature met in the fall of 1993, with the industry recoiling from writing property insurance, and with a state hurricane catastrophe trust fund widely touted as a needed instrument, no legislator could afford to go

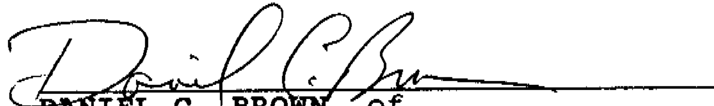
home having voted against a bill creating such a fund. The political atmosphere was charged with the very sort of crisis atmosphere in which logrolling thrives.

The far-reaching consequences of the offending provisions of Chapter 93-409, and their practical and functional disassociation from the purpose of creating the Fund, are demonstrated above. The bedrock objective of the carefully-chosen language of Article III, § 19(f)(1) is to require that such collateral matters be debated, deliberated, and voted upon in a bill separated from one creating a trust fund. Article III, § 19(f)(1) was written to prevent tying a vote on propositions with far-reaching collateral effects to a vote for the limited objective of creating of a trust fund such as this. It is precisely under the conditions surrounding Chapter 93-409 that the constitutional discipline meted out in Article III, § 19(f)(1) is most sorely needed.

That discipline should not be abandoned by the expedient of infusing a relaxing gloss onto the language of Article III, § 19(f)(1), a gloss opposed to its clear words, unsupported by constitutional precedent, and at odds with fundamental precepts of constitutional exposition.

CONCLUSION

For the reasons stated herein, the Court should reverse the decision below, and remand with instructions to enter judgment declaring that the Fund was not constitutionally created, since Chapter 93-409, Laws of Florida, failed to comply with the command of Article III, § 19(f)(1), Florida Constitution, that the Fund be created "in a separate bill for that purpose only."



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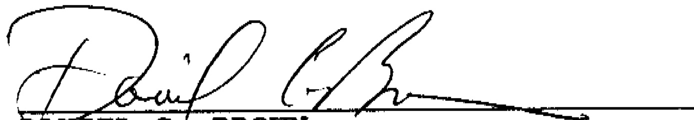
ATTORNEYS FOR PETITIONERS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail to **JOHN K. AURELL, KENNETH R. HART** and **STEVEN SEYMOE**, MacFarlane, Ausley, Ferguson & McMullen, 277 South Calhoun Street, Tallahassee, Florida 32301; **JAMES A. PETERS**, Assistant Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050 and **ALAN J. LEIFER**, Division of Legal Services, Department of Insurance, 200 East Gaines Street, #412, Tallahassee, Florida 32399-6554, this 17TH day of November, 1995.



DANIEL C. BROWN

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SUPREME COURT OF FLORIDA

AMERICAN BANKERS INSURANCE COMPANY, ET AL.,

Petitioners,

v.

LAWTON CHILES, ETC., ET AL.,

Respondents.

CASE NO. 86,682

District Court of Appeal, 1st District - No. 94-3111

______________________________/

APPENDIX

1. Opinion, District Court of Appeal, First District, State of Florida, Case No. 94-3111, dated August 1, 1995
2. Opinion, District Court of Appeal, First District, State of Florida, Case No. 94-3111, dated September 22, 1995

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

SERVICE INSURANCE COMPANY,
ET AL.,

Appellants,

v.

CASE NO. 94-3111

THE HONORABLE LAWTON
CHILES, ET AL.,

Appellees.

_________________________________/

Opinion filed August 1, 1995.

An appeal from the Circuit Court for Leon County.
P. Kevin Davey, Judge.

Daniel C. Brown and Donna E. Blanton of Katz, Kutter, Haigler, Alderman, Marks & Bryant, P.A., Tallahassee, for appellants.

John K. Aurell, John Beranek, Kenneth P. Hart, and Stephen C. Emmanuel of Macfarlane, Ausley, Ferguson & McMullen, Tallahassee; Gerald B. Curington, Assistant Attorney General, Department of Legal Affairs, Tallahassee; Alan J. Leifer, Division of Legal Services, Department of Insurance, Tallahassee, for appellees.

WOLF, J.

Appellants challenge a final summary judgment upholding the validity of chapter 93-409, Laws of Florida (The Act). Appellants argue that The Act violates article III, section 19 of the Florida Constitution which governs the creation of trust

funds by the state of Florida. We find that there was no violation of the constitutional provision, and affirm.

Appellants are insurance companies who sued in a multi-count complaint, challenging the constitutionality of the Hurricane Catastrophe Trust Fund created by chapter 93-409, Laws of Florida (codified at section 215.555, Florida Statutes (Supp. 1994)). The appellees are Lawton Chiles, Gerald Lewis, and Tom Gallagher in their official capacities as the State Board of Administration (SBA).

The Legislature enacted chapter 93-409 in November of 1993, during a special session which was called due to a potential crisis in the insurance industry in the aftermath of Hurricane Andrew. This Act created the Florida Hurricane Catastrophe Fund which is funded by assessments on appellants and other insurers and is administered by the SBA. The Act also contains provisions which in pertinent part read,

> (3) FLORIDA HURRICANE CATASTROPHE FUND CREATED.--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, loaned, or appropriated except to pay obligations of the fund arising out of reimbursement contracts entered into under subsection (4), payment of debts including obligations arising out of revenue bonds issued under subsection (6), costs of the mitigation program under subsection (7), costs of procuring reinsurance, and costs of administration of the fund....
>
> ****
>
> (5) REIMBURSEMENT PREMIUMS.--

(d) All premiums paid to the fund under reimbursement contracts shall be treated as premium for approved reinsurance for all accounting and regulatory purposes.

****

(6) REVENUE BONDS.--

(a) Upon the occurrence of a hurricane and a determination that the moneys in the fund are or will be insufficient to pay reimbursement at the levels promised in the reimbursements contracts, the board shall enter into agreements with local governments for the issuance of revenue bonds for the benefit of the fund. The term of the bonds may not exceed 15 years. The board shall pledge all future revenues under subsection (5) and under paragraph (c), or a lesser portion of such revenues sufficient to raise moneys in an amount that will pay reimbursement at the levels promised in the reimbursement contracts, to the retirement of such bonds. The board may also enter into such agreements in the absence of a hurricane upon a determination that such action would maximize the ability of the fund to meet future obligations.

(b) The governing body of any county or municipality may issue bonds as defined in s. 125.013 or s. 166.101 from time to time to fund an assistance program, in conjunction with the Florida Hurricane Catastrophe Fund, for the purpose of meeting the reimbursement obligations of the fund. The issuance of such bonds is for the public purpose of ensuring that policyholders located within the county or municipality are able to recover under property insurance policies after a covered event. Revenue bonds may not be issued until validated pursuant to the provisions of chapter 75. The county or municipality shall enter into such contracts with the fund as are necessary to carry out this section. Any bonds issued under this section shall be payable from and secured by moneys received by the fund under subsection (5), and assigned and pledged to or on behalf of the county or municipality for the benefit of the holders of such bonds. The funds, credit, property, and taxing power of the

state or of the county or municipality shall not be pledged for the payment of such bonds.
(c) If the board determines that the amount of revenue produced under subsection (5) is insufficient to fund revenue bonds to pay reimbursement at the levels promised in the reimbursement contracts, the board shall direct the Department of Insurance to levy an emergency assessment on each insurer writing property and casualty business in this state. Pursuant to the emergency assessment, each such insurer shall pay to the fund by July 1 of each year an amount equal to 2 percent of its gross direct written premium for the prior year from all property and casualty business in this state except for workers' compensation. The annual assessments under this paragraph shall continue until the revenue bonds issued with respect to which the assessment was imposed are retired. An insurer shall not at any time be subject to more than one assessment under this paragraph. Within 90 days after the assessment is levied under this paragraph, each insurer subject to the assessment shall make a rate filing for all coverages on which the assessment is based. If the filing reflects a rate change attributable entirely to the assessment, the filing shall consist of a certification so stating and shall be deemed approved when made, subject to the authority of the Department of Insurance to require actuarial justification as to the adequacy of any rate at any time.
(7) ADDITIONAL POWERS AND DUTIES.--
(a) The board may procure reinsurance from reinsurers approved under s. 624.610 for the purpose of maximizing the capacity of the fund.
(b) In addition to borrowing under subsection (6), the board may also borrow from any market sources at prevailing interest rates.
****
(10) VIOLATIONS.--Any violation of this section constitutes a violation of the Insurance Code.

The appellants filed a motion for summary judgment, and the appellees filed a cross-motion for summary judgment. Appellants argued that chapter 93-409 violated article III, section 19(f) of the Florida Constitution which states,

> (f)(1) No trust fund of the State of Florida or other public body may be created by law without a three-fifths (⅗) vote of the membership of each house of the legislature in a separate bill for that purpose only.

The trial count found that the legislation was constitutional and granted SBA's cross-motion for summary judgment in pertinent part stating,

> B. Chapter 93-409, Laws of Florida, is a law establishing a trust fund. Therefore, it must meet the separate bill requirement of Article III, Section 19(f)(1) of the Florida Constitution. Because it is a substantive law, Chapter 94-409 must also meet the one subject and matter properly connected therewith standard of Article III, Section 6 of the Florida Constitution.
> C. Chapter 93-409 is not an appropriation bill. Therefore, Article III, Section 12 of the Florida Constitution does not apply.
> D. Chapter 93-4090 is not a citizens' initiative amendment to the Florida Constitution. Therefore, Article XI, Section 3 of the Florida Constitution does not apply.
> E. Chapter 93-409 complies with the requirements of Article III, Section 19(f) and Article III, Section 6 of the Florida Constitution.[1]

---

[1]Contrary to assertions made by appellants, we do not read the final judgment as being a statement by the trial court that the same legal standard applies in determining compliance with article III, section 19(f)(1), and article III, section 6 of the constitution. We read this portion of the judgment to state only that the challenged statute complies with both provisions. We also disagree with the idea that an affirmance of the trial court

Article III, section 19(f)(1) of the constitution dealing with the creation of trust funds became effective on November 4, 1992. The Legislature enacted section 215.3207 relating to creation of trust funds in 1992, and has subsequently amended the statute in 1993 and 1994. This section implements the constitutional provision and reads,

> Trust funds; establishment; criteria.--A trust fund may be created by law only by the Legislature and only if passed by a three-fifths vote of the membership of each house in a separate bill for that purpose only. Except for trust funds being re-created by the Legislature, each trust fund must be created by statutory language that specifies at least the following:
> (1) The name of the trust fund.
> (2) The agency or branch of state government responsible for administering the trust fund.
> (3) The requirements or purposes that the trust fund is established to meet.
> (4) The sources of moneys to be credited to the trust fund or specific sources of receipts to be deposited in the trust fund.

A relatively contemporaneous construction of the constitution by the Legislature is strongly presumed to be correct. Brown v. Firestone, 382 So. 2d 654 (Fla. 1980); Smith

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requires that we adopt the same legal analysis for determining compliance with art. III, § 19(f) that has previously been adopted for determining compliance with art. III, § 6 of the Florida Constitution. Pursuant to art. III, § 6, the legislation may involve any subject which the Legislature determines will be the common thread that links various parts of a bill so as to not violate the one-subject provision. On the other hand, review pursuant to art. III, § 19(f) does not involve a search for a common thread, but must focus on creation of the trust fund and subjects directly connected therewith.

v. Brantley, 400 So. 2d 443 (Fla. 1981). In enacting section 215.3207, the Legislature reasonably interpreted the constitutional provision to mean that items related to the purpose, administration, and funding should be included within a bill creating a trust fund. Matters relating to regulation and solvency of the fund clearly fall within the parameters of administration and funding.

The appellants argue that the bill creating the trust fund may only create the fund rather than also dealing with matters reasonably relating to the creation. This overly restrictive interpretation is unreasonable and flies in the face of the obvious intent of article III, section 19 of the constitution. The intent of this provision is to make it more difficult to create trust funds (three-fifths 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, section 19. 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.

All of the provisions of chapter 93-409 are related to the purpose, administration (including regulation), and funding (including ensuring solvency) of the trust fund.

The purpose of the Florida Hurricane Catastrophe Fund was set forth in section 1 of The Act:

> (1) Findings and purpose.--The Legislature finds and declares as follows:
> (a) There is a compelling state interest in maintaining a viable and orderly private sector market for property insurance in this state. To the extent that the private sector is unable to maintain a viable and orderly market for property insurance in this state, state actions to maintain such a viable and orderly market are valid and necessary exercises of the police power.
> (b) As a result of unprecedented levels of catastrophic insured losses in recent years, and especially as a result of Hurricane Andrew, numerous insurers have determined that in order to protect their solvency, it is necessary for them to reduce their exposure to hurricane losses. Also as a result of these events, world reinsurance capacity has significantly contracted, increasing the pressure on insurers to reduce their catastrophic exposures.
> (c) Mortgages require reliable property insurance, and the unavailability of reliable property insurance would therefore make most real estate transactions impossible. In addition, the public health, safety, and welfare demand that structures damaged or destroyed in a catastrophe be repaired or reconstructed as soon as possible. Therefore, the inability of the private sector insurance and reinsurance markets to maintain sufficient capacity to enable residents of this state to obtain property insurance coverage in the private sector

> endangers the economy of the state and endangers the public health, safety, and welfare. Accordingly, state action to correct for this inability of the private sector constitutes a valid and necessary public and governmental purpose.
>
> (d) The insolvencies and financial impairments resulting from Hurricane Andrew demonstrate that many property insurers are unable to unwilling to maintain reserves, surplus, and reinsurance sufficient to enable the insurers to pay all claims in full in the event of a catastrophe. State action is therefore necessary to protect the public from an insurer's unwillingness or inability to maintain sufficient reserves, surplus, and reinsurance.
>
> (e) A state program to provide reimbursement to insurers for a portion of their catastrophic hurricane losses will create additional insurance capacity sufficient to ameliorate the current dangers to the state's economy and to the public health, safety, and welfare.
>
> (f) It is essential to the functioning of a state program to increase insurance capacity that revenues received be exempt from federal taxation. It is therefore the intent of the Legislature that this program be structured as a state trust fund under the direction and control of the State Board of Administration and operate exclusively for the purpose of protecting and advancing the state's interest in maintaining insurance capacity in this state.

The first provision challenged by appellants is that part of chapter 93-409 which created section 215.555(5)(d), which clarifies the status of payments by insurance companies and specifies that the moneys paid to the fund will be treated as moneys paid for approved reinsurance for accounting and regulatory purposes. Because the purpose of the CAT Fund is to provide the functional equivalent of reinsurance for insurance

companies in the event of a catastrophic event, this provision directly relates to the purpose of The Act. This accounting mechanism directly affects the burden placed on the insurance companies required to make payments into the trust fund. The issue of the burden which will be placed on payors into a trust fund should and does have an affect on the legislative determination of the viability of creating a trust fund. Second, the companies attack the portion of The Act which creates section 215.555(6)(a) and (b), Florida Statutes. These subsections authorize local governments to issue revenue bonds "for the benefit of the fund" if the SBA finds it necessary because the moneys in the fund are insufficient to meet the fund's contractual obligations. Because the proceeds of these bonds provide a revenue source directly for the credit and benefit of the trust fund, which revenues will be deposited in the fund, they directly relate to funding and solvency of the trust fund.

The third challenged provision creates section 215.555(6)(c), Florida Statutes, which provides that if the SBA determines the amount of revenue produced under section 215.555(5) is insufficient to fund bonds to pay reimbursement to the insurance companies at the promised levels, then the SBA will authorize the Department of Insurance to levy an emergency assessment on each insurer writing property and casualty insurance business in the state. The proceeds of these assessments are to be deposited in the trust fund in order to

enable the fund to meet debt service obligations with respect to bonds issued for the benefit of the fund. This provision also directly relates to the funding and solvency of the trust fund in emergency situations. Providing for how to deal with an emergency in the context of this emergency fund can hardly be considered extraneous to creation of the trust fund.

Last, the plaintiffs challenge section 4 which amends section 624.5091(3), Florida Statutes, to provide that reimbursement premiums and emergency assessments paid to the CAT Fund shall be excluded from the calculation of the retaliatory tax authorized by section 624.5091, Florida Statutes. This provision clarifies how, for tax purposes, to appropriately account for premiums paid to the fund. Resolving the question of whether fund premiums are subject to this tax is a policy decision of the Legislature. This section could have just as appropriately been included in the CAT Fund section itself, rather than as an amendment to section 624.5091.

In summary, all of the provisions challenged by appellants directly relate to the purpose, funding, administration, and regulation of the Hurricane Catastrophe Trust Fund. The Act is, therefore, not violative of article III, section 19 of the Florida Constitution. The decision of the circuit court is affirmed.

LAWRENCE, J., concurs; WEBSTER, J., dissenting with written opinion.

WEBSTER, J., dissenting.

I acknowledge our responsibility to apply to statutes a presumption of constitutionality, and to construe them in such a way as to uphold them, to the extent that is reasonably possible. E.g., Florida Dep't of Educ. v. Glasser, 622 So. 2d 944 (Fla. 1993); Capital City Country Club v. Tucker, 613 So. 2d 448 (Fla. 1993). I recognize, also, the importance of the legislation challenged by this appeal. However, notwithstanding those considerations, I am constrained to conclude that there is no reasoned way to reconcile chapter 93-409, Laws of Florida, with article III, section 19(f)(1), of the Florida Constitution. Accordingly, I dissent.

Like statutory construction, the process of constitutional interpretation is far from scientific. There is a plethora of rules intended to assist in determining the meaning of ambiguous provisions. Because many of those rules are contradictory, in a very real sense, the outcome often will be determined by the rules one chooses to use. However, a first principle, common to both statutory and constitutional interpretation, is the precept that, if the language is clear and unambiguous, there is nothing to interpret, and no reason to resort to rules of construction. Thus, in City of Jacksonville v. Continental Can Co., 113 Fla. 168, 172-73, 151 So. 488, 489-90 (1933), the court said that, when faced with the need to ascertain the meaning of a part of our constitution,

> the aim should be to give effect to the purpose indicated by a fair interpretation of the language, the natural signification of the words used in the order, and grammatical arrangement in which they have been placed. If the words thus regarded convey a definite meaning and involve no absurdity or contradiction between the parts of the same instrument, no construction is allowable.
>
> The words and terms of a Constitution are to be interpreted in their most usual and obvious meaning, unless the text suggests that they have been used in a technical sense. The presumption is in favor of the natural and popular meaning in which the words are usually understood by the people who have adopted them.
>
> . . . .
>
> It has been said that, as statutes are hastily and unskillfully drawn, they need construction to make them sensible, but Constitutions import the utmost discrimination in the use of language, that which the words declare is the meaning of the instrument. It must be very plain, nay absolutely certain, that the people did not intend what the language they had employed in its natural signification imports before a court should feel at liberty to depart from the plain meaning of a constitutional provision.

More recently, the supreme court has said that "[a]ny inquiry into the proper interpretation of a constitutional provision must begin with an examination of that provision's explicit language. If that language is clear, unambiguous, and addresses the matter in issue, then it must be enforced as written." Florida Soc'y of Ophthalmology v. Florida Optometric Ass'n, 489 So. 2d 1118, 1119

(Fla. 1986). Accord Florida League of Cities v. Smith, 607 So. 2d 397, 400 (Fla. 1992) ("the law is settled that when constitutional language is precise, its exact letter must be enforced and extrinsic guides to construction are not allowed to defeat the plain language"); In re Advisory Opinion to the Governor, 374 So. 2d 959, 964 (Fla. 1979) ("[i]n construing provisions of the constitution, each provision must be given effect, according to its plain and ordinary meaning"); City of St. Petersburg v. Briley, Wild & Associates, Inc., 239 So. 2d 817, 822 (Fla. 1970) ("[i]f the language is clear and not entirely unreasonable or illogical in its operation we have no power to go outside the bounds of the constitutional provision in search of excuses to give a different meaning to words used therein").

Personally, I find nothing unclear, imprecise or ambiguous in the following language:

> (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.

Art. III, § 19(f)(1), Fla. Const. I fail to see how the phrase "in a separate bill for that purpose only" can possibly be read as intended to refer to anything other than the creation of trust

funds. It seems to me that the only aspect of the provision as to which there is room for discussion relates to what matters must necessarily be included in a bill in order to create a trust fund. This would appear to be a matter regarding which the collective judgment of the legislature should carry considerable weight. See, e.g., State v. Kaufman, 430 So. 2d 904, 907 (Fla. 1983) ("[a] contemporaneous construction of a constitutional provision by the legislature is presumptively correct unless manifestly erroneous"). In fact, the legislature has spoken on this matter in section 3 of chapter 93-159, Laws of Florida (amending section 215.3207, Florida Statutes, which had been created by chapter 92-142, section 17, Laws of Florida):

> **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.

Subsection (5) is, of course, mandated by article III, section 19(f)(2), of the Constitution. The other four subsections all address matters logically indispensable to the creation of a trust fund--it must have a name; the agency or branch of government which will administer it must be identified; the reason or reasons for its creation must be specified; and the source or sources of the funds to be held must be identified. In addition, as the legislature recognized, there might be other matters indispensable to the creation of some particular fund. This seems to me perfectly consistent with the clear language of section 19(f)(1).

However, I am unable to follow the process by which the majority gleans from this narrow, unobjectionable, legislative interpretation the intent that all "items related to the purpose, administration, and funding should be included within a bill creating a trust fund." Ante, at 7. Rather, it appears to me that such a conclusion cannot reasonably be drawn from the legislature's language. Moreover, I suggest that, were such a conclusion sustainable from the legislature's language, it would be "manifestly erroneous," given the language of section 19(f)(1) and, therefore, entitled to no weight.

In my opinion, the clear intent of section 19(f)(1) is that trust funds may be created only by a bill which addresses no other purpose. However, the concept of creation necessarily includes more than the mere language that "such-and-such a trust fund is hereby created." It includes, as well, all matters logically indispensable to the creation of such a fund--matters such as those identified by the legislature in what is now section 215.3207, Florida Statutes. (Obviously, this is a reading much narrower than that of the majority--that all matters "related to the purpose, administration, and funding" of the trust fund may be included in the bill creating the fund.)

I concede that many (perhaps even most) of the matters addressed in chapter 93-409 are logically indispensable to the creation of the Florida Hurricane Catastrophe Fund. However, it seems to me that some clearly are not. On the contrary, some of the provisions seem to me clearly unrelated in any meaningful sense to the creation of the Fund. In particular, I am unable to discern any connection between creation of the Fund and the following provisions:

> Section 1(5)(d), which states that "[a]ll premiums paid to the [F]und under reimbursement contracts shall be treated as premium for approved reinsurance for all accounting and regulatory purposes" (codified as section 215.555(5)(d), Florida Statutes);

Section 1(6)(b), which authorizes counties and municipalities to "issue bonds as defined in s. 125.013 or s. 166.101 from time to time to fund an assistance program, in conjunction with the . . . Fund, for the purpose of meeting the reimbursement obligations of the [F]und," and discusses requirements for issuance and payment of such bonds (codified as section 215.555(6)(b), Florida Statutes);

Section 1(10), which states that any violation of any aspect of section 1 "constitutes a violation of the Insurance Code" (codified as section 215.555(10), Florida Statutes);

Section 3, which directs the State Board of Administration to "request an expedited opinion from the United States Internal Revenue Service as to the tax-exempt status of the state with respect to revenues collected" by the Fund, and other matters; and

Section 4, which amends section 624.5091, Florida Statutes (a part of the Florida Insurance Code), relating generally to the amount, and method of computation, of retaliatory taxes to be imposed by the Department of Revenue upon foreign insurers for the purpose of ensuring that Florida insurers are competing on an equal footing with foreign insurers.

Because I am unable to conclude, based upon a fair reading of chapter 93-409, that all of its provisions are logically indispensable to the creation of the Fund, I am constrained to conclude that chapter 93-409 violates article III, section 19(f)(1), of the Florida Constitution. Therefore, I dissent.

Appendix

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

SERVICE INSURANCE COMPANY,
ET AL.,

Appellants,

v.

THE HONORABLE LAWTON CHILES, ET AL.,

Appellees.

CASE NO. 94-3111

Opinion filed September 22, 1995.

An appeal from the Circuit Court for Leon County.
P. Kevin Davey, Judge.

Daniel C. Brown and Donna E. Blanton of Katz, Kutter, Haigler, Alderman, Marks & Bryant, P.A., Tallahassee, for appellants.

John K. Aurell, John Beranek, and Kenneth R. Hart of Macfarlane, Ausley, Ferguson & McMullen, Tallahassee, for appellee, State Board of Administration; Alan J. Leifer, Division of Legal Services, Department of Insurance, Tallahassee, for appellee, Tom Gallagher.

OPINION ON MOTION FOR CERTIFICATION

WOLF, J.

The majority and dissenting opinions in the instant case offer differing means of interpreting article III, section 19(f) of the Florida Constitution. This section has never been addressed by the Florida appellate courts. According to the majority opinion, in implementing this constitutional provision, the Legislature intended that all items relating "to the purpose, administration, and funding should be included within a bill creating a trust fund." The dissent, however, interprets the

constitutional provision to mean that only matters "logically indispensable to the creation of a trust fund" can be included in a bill creating a trust fund. We feel that in light of the varying interpretations of this new constitutional provision, it is appropriate to certify the following question, suggested by the appellants, to be one of great public importance:

> 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?

WEBSTER and LAWRENCE, JJ., concur.