

**IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

FLORIDA WILDLIFE FEDERATION,
INC., *et al.*,

Plaintiffs,

v.

Case No.: 2015-CA-001423

JOE NEGRON, as President of the
Florida Senate, *et al.*,

Defendants.

FLORIDA DEFENDERS OF THE
ENVIRONMENT, INC., *et al.*,

Plaintiffs,

v.

Case No. 2015-CA-002682

KEN DETZNER, in his official capacity as
Florida Secretary of State, *et al.*,

Defendants.

FINAL JUDGMENT FOR PLAINTIFFS

A hearing was held in this case on June 15, 2018 on (1) the motion for summary judgment of Plaintiffs Florida Defenders of the Environment (FDE), et al., (2) the motion for partial summary judgment of Plaintiffs Florida Wildlife Federation, Inc. (FWF), et al., and (3) the motion for summary judgment of Florida Department of State. All parties were represented by counsel at the hearing.

With regard to the three above specified motions, FDE's motion for summary judgment was argued first because it was the first filed. Based upon the Court's ruling for FDE at the

conclusion of the argument on that motion, the parties conceded the ruling in FDE's favor was dispositive of the other two motions, consequently no further argument was held. The parties agreed that pursuant to that ruling the trial scheduled for July 23-27, 2018 would be cancelled.

In making this ruling the Court considered all materials proper to consider on the motions pursuant to Florida Rule of Civil Procedure 1.510.

This case involves two cases filed challenging the constitutionality of appropriations from Florida's Land Acquisition Trust Fund and expenditures by four State of Florida agencies. The two cases were ultimately consolidated. The agency Defendants are the Department of Agriculture and Consumer Services, the Department of Environmental Protection, the Fish and Wildlife Conservation Commission and the Department of State. The two cases were ultimately consolidated.

The cases concern Article X, Section 28 of the Florida Constitution, which states in full as follows:

SECTION 28. Land Acquisition Trust Fund. –

- (a) Effective on July 1 of the year following passage of this amendment by the voters, and for a period of 20 years after that effective date, the Land Acquisition Trust Fund shall receive no less than 33 percent of net revenues derived from the existing excise tax on documents, as defined in the statutes in effect on January 1, 2012, as amended from time to time, or any successor or replacement tax, after the Department of Revenue first deducts a service charge to pay the costs of the collection and enforcement of the excise tax on documents.
- (b) Funds in the Land Acquisition Trust Fund shall be expended only for the following purposes:
 - (1) As provided by law, to finance or refinance: the acquisition and improvement of land, water areas, and related property interests, including conservation easements, and resources for conservation lands including wetlands, forests, and fish and wildlife habitat; wildlife management areas; lands that protect water resources and drinking water sources, including lands protecting the water quality and quantity of rivers, lakes, streams, springsheds, and lands

providing recharge for groundwater and aquifer systems; lands in the Everglades Agricultural Area and the Everglades Protection Area, as defined in Article II, Section 7(b); beaches and shores; outdoor recreation lands, including recreational trails, parks, and urban open space; rural landscapes; working farms and ranches; historic or geologic sites; together with management, restoration of natural systems, and the enhancement of public access or recreational enjoyment of conservation lands.

(2) To pay the debt service on bonds issued pursuant to Article VII, Section 11(e).

(c) The moneys deposited into the Land Acquisition Trust Fund, as defined by the statutes in effect on January 1, 2012, shall not be or become commingled with the general revenue fund of the state.

Article X, Section 28 was a citizen initiative amendment approved by 75% of Florida voters in the November 2014 election. It has a plain meaning based on its words and grammar. The plain meaning is that funds in the Land Acquisition Trust Fund can be expended only for (1) the acquisition of conservation lands, and (2) the improvement, management, restoration and enhancement of public access and enjoyment of those conservation lands purchased after the effective date of the amendment.

The title of the amendment is an important part of what makes the language so unambiguous. The title is "Land Acquisition Trust Fund." It is a trust fund for the acquisition of land.

Subsection (b) states the funds "shall be expended only for the following purposes." Those purposes are set out in two parts, the first of which is subsection (b)(1). That subsection contains a single lengthy sentence (almost 150 words), which begins "as provided by law to finance or refinance:" followed by a set of 10 clauses separated by semicolons. The term "finance or refinance" means to provide funds to pay for something. The first group of things that can be financed or refinanced are "the acquisition and improvement of land, water areas, and related property interests, including conservation easements, and resources for conservation lands including wetlands, forests, and fish and wildlife habitat." The subsection goes on to list

the other types of conservation lands that can be acquired and improved. Accordingly, what can be acquired and improved are conservation land and water areas, and related property interests.

Concluding the lengthy sentence in subsection (b)(1), the last clause is introduced with the connecting words “together with,” followed by the phrase “management, restoration of natural systems, and the enhancement of public access or recreational enjoyment of conservation lands.” The connecting words “together with” does more than add one group to the list – it also attaches it to the clauses preceding it. After conservation lands are first acquired, they then may be managed or restored so that public enjoyment of them is enhanced. This is the plain meaning of the text, and it is the only reading of that subsection that gives effect to all the words, the grammar and punctuation.

The plain meaning of the text is supported by the ballot title and summary put before the voters. The ballot title was “Water and Land Conservation – Dedicates Funds to Acquire and Restore Florida Conservation and Recreation Lands.” The ballot summary further explained what acquisition and restoration is and how they were going to be accomplished. It read: “Funds the Land Acquisition Trust Fund to acquire, restore, improve, and manage conservation lands,” and lists those conservation lands that can be acquired and then restored, improved, and managed. In 2013 the Florida Supreme Court issued its advisory opinion which interpreted the proposed amendment to determine whether it complied with the single subject and accurate ballot title and summary requirements. The Court held the title and summary were “straightforward and accurate.” *Advisory Op. to Atty. Gen. re Water & Land Conservation – Dedicates Funds to Acquire & Restore Fla. Conservation & Recreation Lands*, 123 So.3d 47, 52 (Fla. 2013).

The clear intent was to create a trust fund to purchase new conservation lands and take care of them. The conservation lands the State already owned were to be taken care of, certainly, but from non-trust money.

This interpretation of Article X, Section 28 is consistent with the context in which it was passed. Beginning in 1963, with the passage of the Outdoor Recreation and Conservation Act, a succession of programs purchased lands for public recreation and for conservation of water and other natural resources. They were financed by the Land Acquisition Trust Fund which was created by constitutional amendment and by a statute incorporated by reference into the amendment. It read in relevant part:

Bonds; land acquisition for outdoor recreation development. – The outdoor recreational development council, as created by the 1963 legislature, may issue revenue bonds, revenue certificates or other evidences of indebtedness to acquire lands, water areas and related resources, and to construct, improve, enlarge and extend capital improvements and facilities thereon in furtherance of outdoor recreation, natural resources conservation and related facilities in this state; provided, however, the legislature with respect to such revenue bonds, revenue certificates or other evidences of indebtedness shall designate the revenue or tax sources to be deposited in or credited to the land acquisition trust fund for their repayment and may impose restrictions on their issuance, including the fixing of maximum interest rates and discounts. The land acquisition trust fund, created by the 1963 legislature for these multiple public purposes, shall continue from the date of the adoption of this amendment for a period of fifty years.

Article IX, Section 17, Florida Constitution (1965).

The statutory Land Acquisition Trust Fund incorporated by reference into the 1965 amendment was Section 375.041, Florida Statutes, the Outdoor Recreation and Conservation Act of 1963, which provided, in pertinent part:

- (1) There is hereby created a land acquisition trust fund to facilitate and expedite the acquisition of land, water areas and related resources required to accomplish the purposes of this act.... All moneys so deposited into the land acquisition trust fund shall be trust funds for the uses and purposes herein set forth,... and such moneys shall not become or be commingled with the general revenue fund of the state....

- (3) Any moneys in the land acquisition trust fund ... may be expended from time to time to acquire land, water areas, and related resources and to construct, improve, enlarge, extend, operate and maintain capital improvements and facilities in accordance with the plan.

Other legislation was enacted over the years to accomplish those purposes. However, as stated in the 1965 amendment, the Land Acquisition Trust Fund was to expire in 50 years. It was essentially replaced by Article X, Section 28 in the 2014 election.

None of the appropriations from the Land Acquisition Trust Fund in Article X, Section 28 contain restrictions on the use of the funds for the purposes allowable under that constitutional provision. Defendants' interrogatory answers to FDE's fourth interrogatories essentially state that the funds are not separately accounted for by the Defendant agencies. Exhibit G to FDE Plaintiffs' Motion for Summary Judgment (Response Nos. 2-9 of Fourth Interrogatories to Agency Defendants).

The undisputed facts in this case include discovery responses and admissions by Defendants demonstrating they commingle Land Acquisition Trust Fund money with money from General Revenue and other sources. Article X, Section 28 (c) was inserted specifically to prohibit such commingling. Subsection (c) states:

The moneys deposited into the Land Acquisition Trust Fund, as defined by the statutes in effect on January 1, 2012, shall not be or become commingled with the General Revenue Fund of the state.

Like all prohibitions on commingling, the purpose of this commingling prohibition is to prevent the money in the Land Acquisition Trust Fund from being used for other purposes. Commingling Land Acquisition Trust Fund money with other funds deprives them of their constitutionally restricted character.

In their consolidated response to the motions for summary judgment, Defendants submitted no evidence to show any of the challenged appropriations may have been used for management of any conservation lands newly acquired with funds appropriated from Article X, Section 28. Instead, they agreed that if Plaintiffs' interpretation is correct, no existing programs could have been shifted from other funding sources to the Land Acquisition Trust Fund.

Because Plaintiffs did not challenge any appropriations for conservation land acquisition, all of the challenged appropriations from the Land Acquisition Trust Fund are hereby declared unconstitutional to the extent set out in the relevant complaints.

For the reasons stated here, this Final Judgment is entered for all Plaintiffs and against all Defendants. It is **ORDERED AND ADJUDGED** that:

1. Article X, Section 28 creates a trust fund that must be expended, if at all, to acquire conservation lands or other conservation property interests, as defined by that provision, that the State of Florida did not own on the effective date of that amendment and thereafter, to improve, manage, restore natural systems thereon, and enhance public access or enjoyment of those conservation lands.
2. Funds in the Land Acquisition Trust Fund created by Article X, Section 28 may not be expended to improve, manage, restore natural systems on, or enhance public enjoyment of non- conservation lands or water, or for any non-conservation purpose without regard to when the State acquired any land, water or other property.
3. No appropriation from the Land Acquisition Trust Fund created by Article X, Section 28 may be made to any agency or other entity that receives funding from any other source, including General Revenue, without clear language limiting the use of the Land Acquisition Trust Fund money to the purposes authorized by Article X, Section 28.

4. Agencies expending money from the Land Acquisition Trust Fund must track expenditures to ensure they are being made in compliance with Article X, Section 28.
5. The following specific provisions are unconstitutional to the extent set forth in the operative complaints in this action: appropriation numbers 1376, 1377, 1377A, 1379, 1380, 1381, 1381A, 1382, 1390, 1406, 1407, 1408, 1413, 1414, 1415, 1416A, 1417, 1419, 1420, 1421, 1422, 1428, 1497, 1516, 1518, 1523, 1525, 1532, 1533, 1535, 1539, 1555, 1556, 1557, 1564, 1572, 1573, 1574, 1578, 1579, 1581, 1582, 1583, 1599, 1601, 1605, 1606, 1608, 1614, 1623, 1624, 1625, 1635, 1638, 1640, 1641, 1642, 1643, 1644, 1646, 1648, 1649, 1650, 1660, 1694, 1696, 1705, 1706, 1713, 1714, 1715, 1721, 1723, 1740, 1749, 1753, 1757, 1759, 1765, 1769, 1772, 1778, 1780, 1788, 1790, 1794, 1795, 1796, 1808, 1813, 1818, 1820, 1827, 1843, 1845, 1852, 1855, 3056, 3081, 3082, 3083, 3087, 3088, 3089, 3090, 3091, 3092, 3113, 3114, 3115, and 3122 from Chapter 2015 – 232, Laws of Florida, and appropriation numbers 1341, 1343, 1344, 1345, 1345A, 1354, 1370, 1371, 1372, 1377, 1379, 1382, 1384, 1385, 1387, 1393, 1483, 1490, 1492, 1498, 1499, 1505, 1542, 1547, 1548, 1565, 1567, 1571, 1584, 1587, 1607, 1609, 1620, 1623, 1640, 1644, 1675, 1677, 1688, 1691, 1692, 1700, 1701, 1702, 1709, 1711, 1729, 1739, 1743, 1749, 1751, 1752, 1757, 1763, 1769, 1779, 1781, 1793, 1799, 1804, 1841, 1844, 3041, 3067, 3068, 3069, 3072, 3075, 3076, 3077, 3098, 3099, 3100, and 3104 from Chapter 2016 – 66, Laws of Florida.

DONE AND ORDERED in Chambers, Tallahassee, Leon County, Florida, on this 28th

day of June, 2018.



CHARLES W. DODSON
Circuit Judge

Copies furnished to all parties on the enclosed service list.

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