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IN THE FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

JOSE OLIVA, in his official capacity as Speaker of the Florida House of Representatives, *et al.*,

Appellants,

v.

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

Appellees.
_____/

Case No. 1D18-3141
L.T. Case Nos. 2018-CA-001423
2018-CA-002682

INITIAL BRIEF OF THE LEGISLATIVE PARTIES

On Appeal from the Circuit Court of the
Second Judicial Circuit in and for Leon County, Florida

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STATEMENT OF THE CASE AND FACTS

This appeal from consolidated cases seeks reversal of a final summary judgment that declared unconstitutional 185 prior, now expired appropriations worth more than $420 million. The trial court concluded that all of the challenged appropriations had violated article X, section 28(b)(1), Florida Constitution, which specifies the purposes for which funds in the Land Acquisition Trust Fund may be expended. Those purposes include land acquisition, but also include certain non-acquisition functions, such as "management," "restoration of natural systems," and the "enhancement of public access or recreational enjoyment of conservation lands." The court below construed article X, section 28(b) to permit expenditures for non-acquisition functions *only* on lands acquired since July 1, 2015, when article X, section 28 took effect. The Constitution, however, does not contain that drastic, unwritten limitation, or even restrict non-acquisition functions to state-owned lands acquired at any time. As the drafters of article X, section 28 testified:

> We could have written an amendment just to fund land conservation. We didn't do that, because the needs of the state of Florida to protect its environment and its water resources and its wildlife habitat and to provide places for people to connect with nature are much broader than that.

R. 4797.

Amendment 1. In 2014, voters adopted a constitutional amendment known as Amendment 1, which added article X, section 28 to the Florida Constitution.

The new provision consists of three subsections. Subsection (a) provides that, for twenty years from July 1, 2015, 33 percent of net revenues from the documentary stamp tax must be deposited into the Land Acquisition Trust Fund (the "LATF"). Subsection (c) provides that funds in the LATF may not be commingled with funds in the State's General Revenue Fund. And of most relevance here, subsection (b) broadly enumerates the purposes for which funds in the LATF may be expended. In addition to expenditures for debt service, subsection (b) authorizes expenditures:

> 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.

Art. X, § 28(b)(1), Fla. Const.

Amendment 1's Adoption. Amendment 1 was a citizen initiative sponsored by Florida's Water and Land Legacy, Inc. (the "Sponsor"). R. 4874.[1] Florida law establishes a Financial Impact Estimating Conference (the "FIEC") to review each initiative and to prepare a statement of the initiative's probable financial impact for

[1] The Sponsor was later renamed Florida Conservation Voters, Inc. R. 4813.

the ballot. Art. XI, § 5(c), Fla. Const.; § 100.371(5), Fla. Stat. The Florida Supreme Court reviews the accuracy of the ballot title, ballot summary, and financial impact statement that attend each initiative. Art. IV, § 10, Art. V, § 3(b)(10), Fla. Const.

In May 2013, the Sponsor presented Amendment 1 to the FIEC. R. 4773. The Sponsor urged the FIEC to find that Amendment 1 would have no financial impact on state government, R. 4773–80, calling its proposal a "wash to the State," R. 4778. The Sponsor argued that funds dedicated by Amendment 1 could be used to fund a "range" of already existing programs that served Amendment 1's broad purposes, R. 4777, with no increase in state expenditures, R. 4777–84. It pointed out that the previous state budget included many large appropriations that, under Amendment 1, could have been made from LATF funds, including $15 million for park improvements, $7 million to restore the St. Johns River, and $50 million for trails. R. 4777. The Sponsor explained that the Legislature could simply "shift" existing programs from their previous funding sources to the funds dedicated by Amendment 1, and thus avoid any financial impact: "There's any number of things in this current budget that would show that, if you did the fund shift, you're not making any impact." R. 4776–77. Still, the Sponsor anticipated that the dedication of funds would prove beneficial over time; the amount of revenue generated by the documentary stamp tax would gradually increase, while the portion of dedicated funds set aside for debt service would decrease and eventually disappear. R. 4778.

The Sponsor's statements and written submissions to the FIEC demonstrated an expansive view of Amendment 1's purposes. R. 4875, 4880–903. The Sponsor explained that Amendment 1 authorizes expenditures for "management" of any of the places set forth in the amendment text, and that "management" and "restoration of natural systems" are independent authorizations distinct from "acquisition." R. 4777–79. Funds would be available for "a wide range of Everglades issues"—not only capital projects, but also the salaries and programmatic costs associated with Everglades restoration. R. 4778–80. The Sponsor also found "no legal reason why dedicated funds could not be used for capital outlay, operating expenses, and salaries for program purposes" listed in the amendment, noting that "government cannot undertake essential government services without employees." R. 4902.

The FIEC agreed with the Sponsor and concluded that Amendment 1 would not compel additional expenditures. It reasoned (as the Sponsor did) that existing expenditures for the amendment's broad purposes could be shifted to the LATF from their prior funding sources. R. 4775–76, 4875. The FIEC prepared a summary of existing programs that might be eligible for dedicated funds and found that those programs, together with debt service, already received more funding than Amendment 1 would initially dedicate. R. 4775–76. Because Amendment 1 did not compel new expenditures but permitted a "full shift" of current expenditures from other sources to the LATF, the FIEC prepared a financial impact statement for the

ballot that advised voters of the no-impact scenario: "Whether this results in any additional state expenditures depends upon future legislative actions and cannot be determined." R. 4875, 4905. The FIEC further explained its rationale in two detailed, public documents. R. 4875, 4906–27; § 100.371(5)(e)3.–5., Fla. Stat.

The Florida Supreme Court next considered Amendment 1's ballot title and summary and its financial impact statement. R. 4793–95. In its brief, the Sponsor emphasized that the amendment authorizes expenditures for a "broad range of conservation purposes" and reserves to the Legislature "complete discretion as to the allocation among the broad conservation purposes defined in the conservation amendment." R. 4794. The amendment set forth "broad purposes" and was "very narrow in its effect." *Id*. Its impact on legislative powers was "minimal," "limited," and "hardly substantial" because the Legislature enjoyed "broad discretion on how to appropriate the funds" and could appropriate dedicated funds "for any program that furthers the very broad purposes" set forth in the amendment. *Id*. Amendment 1 was "careful to not try to accomplish too much" and "preserves the Legislature's broad discretion in making appropriations consistent with its defined purposes." *Id*.

A "major concern" of the Sponsor was that, if the amendment intruded too far on the legislative appropriations power, it might run afoul of the single-subject requirement applicable to initiatives. R. 4789. Its brief sought to assure the Florida Supreme Court that Amendment 1 did not violate the single-subject rule. R. 4794.

In defending the financial impact statement, the Sponsor's brief explained that Amendment 1 permitted the Legislature to transfer to the LATF "many of the programs currently funded from other sources." R. 4795. The Legislature could "fund environmental programs from the [LATF], rather than from other sources, resulting in little or no increase in overall funding" for the authorized purposes. *Id*.

The Florida Supreme Court approved the ballot title and summary and the financial impact statement. It explained that the amendment would "make a single change": it would dedicate a portion of an existing revenue stream to an existing trust fund that would continue to serve conservation and environmental purposes. *Advisory Op. to Att'y Gen. re Water & Land Conservation*, 123 So. 3d 47, 51 (Fla. 2013). The Court therefore approved the amendment for placement on the ballot.

The Sponsor's public campaign mirrored its statements to the FIEC and the Florida Supreme Court. One of the Sponsor's objectives was to communicate to voters that dedicated funds could benefit a wide range of programs. R. 4784. The centerpiece of the Sponsor's campaign communications was not land acquisition, but clean water. R. 4767. The Sponsor conducted polls to determine how the amendment should be presented to the public and determined that, of its many authorized purposes, clean water, including rivers, lakes, and bays, was most important to voters. R. 4761, 4763–67. The Sponsor "ran a campaign about water" and adopted a messaging strategy "fundamentally about water." R. 4771–72. Its

imagery in public communications across all media emphasized moving water, oceans, beaches, and wildlife. R. 4767. In comparison, land acquisition did not poll well and was not a "primary message" of the campaign. R. 4763–64, 4766–67.

Soon after the voters adopted Amendment 1, the principal organizations that had supported its adoption made a joint recommendation to the Legislature. R. 4809. They urged the Legislature to allocate the anticipated dedication of $662 million for Fiscal Year 2015–16 as follows: $177 million for debt service, $150 million for land acquisition through the Florida Forever program, $150 million for the restoration of estuaries and the Everglades, $90 million for land management, $50 million for Florida's springs, $25 million for conservation easements to protect working farms and ranches, and $20 million for beach management. R. 4809–10. The Legislature adopted a budget for Fiscal Year 2015–16 that appropriated LATF funds for a range of purposes, *see* Ch. 2015-232, Laws of Fla., and Plaintiffs sued.

The Cases Below. The proceedings below consist of two consolidated cases. The first (No. 2015-CA-001423) was filed by Florida Wildlife Federation, Inc., and others (collectively, the "FWF"). The second (No. 2015-CA-002682), was filed by Florida Defenders of the Environment, Inc., and the others (collectively, the "FDE"). All appropriations that Plaintiffs challenged below expired long ago. Both the FWF and the FDE challenged appropriations enacted for Fiscal Year 2015–16, while the FDE also challenged appropriations enacted for Fiscal Year

2016–17. *See* Ch. 2016-66, Laws of Fla.; Ch. 2015-232, Laws of Fla. Despite these similarities, the FWF and the FDE asserted different and conflicting legal theories.

The FWF sued on June 22, 2015, and amended its complaint five times. Its final complaint alleged that 114 appropriations enacted in 2015 were made for unauthorized purposes. R. 3557–66. The FWF's theory was that article X, section 28(b)(1) permits non-acquisition activities (such as restoration and management) only at state parks, state forests, and other state-owned management areas managed under chapter 253 of the Florida Statutes. R. 3551–56. To the extent funds were appropriated for purposes other than land acquisition or the care and maintenance of state-owned management areas, the FWF challenged them as unconstitutional.[2]

The FDE filed its case on November 9, 2015, and later filed amended and supplemental complaints. The FDE challenged 103 appropriations enacted in 2015 and 74 appropriations enacted in 2016. R. 6047–58, 6234–43. Its legal theory was that section 28(b)(1) permits management, restoration, and other non-acquisition functions only on land acquired since article X, section 28 took effect on July 1, 2015. R. 6468–69, 6480, 6486–87. Thus, the FDE insisted that all expenditures to restore, manage, or improve lands not owned by the State of Florida, or which the State acquired before July 2015, were facially and categorically unconstitutional.

[2] Before the final judgment was entered, the FWF voluntarily dismissed its challenges to 26 of the 114 appropriations identified in its complaint. R. 5167–73.

In July 2017, the Legislative Parties noticed the cases for trial. R. 3096–99.[3] The court scheduled a trial for July 2018. R. 3103. The Legislative Parties prepared diligently for an extensive trial to demonstrate the constitutionality of expenditures from approximately 200 appropriations. In April and May 2018, the Legislative Parties disclosed 52 witnesses and more than 200 exhibits. R. 3274–85, 3800–20.

On May 24, 2018, the FWF moved for partial summary judgment as to nine of the 114 appropriations challenged in its operative complaint. R. 3846–86. The motion argued that the nine appropriations—all of them to the Florida Forest Service—were expended for activities on private lands, and not on state forests or other state-owned management areas managed under chapter 253. R. 3847–49, 3857–58, 3871–72, 3877–82. It sought a declaration that those appropriations were unconstitutional under section 28(b), but did not seek injunctive relief. R. 3882–83.

The FDE moved for final summary judgment as to all 177 appropriations challenged in its pleadings. R. 6458, 6473, 6493. It argued that the challenged appropriations were not expended to acquire land or to manage or restore lands acquired since July 1, 2015. R. 6468–69, 6476, 6480, 6483, 6489, 6493–94. The FDE sought only declaratory relief. R. 6494. Defendants did not dispute that the funds were not used to acquire land or to manage or restore lands acquired since

[3] "Legislative Parties" refers to Appellants, the Florida Legislature and, in their official capacities, the Speaker of the Florida House of Representatives and the President of the Florida Senate. The Legislative Parties were defendants below.

July 2015, but they denied that section 28(b) imposed that limitation. R. 4718–27.

The court conducted a summary-judgment hearing at the pretrial conference on June 15, 2018. The court declined to hear the Department of State's motion for summary judgment first—a motion that raised such defenses as mootness and the separation of powers—and instead proceeded directly to the merits of the FDE's constitutional challenge. R. 5121–22. The court then granted the FDE's motion from the bench. R. 5161–62. It stated that it had read article X, section 28 "well over a hundred times" and had "come to the conclusion that it clearly refers to conservation lands purchased after the effective date of the amendment." R. 5162. The Constitution "is meant to say [that] everything that goes in that fund can only be used for conservation lands purchased after the date that it goes into effect." *Id*.

After it granted the FDE's motion for summary judgment, the court noted that "we need to go to our other motions." R. 5162–63. The court then invited the FWF's counsel to present the FWF's motion for partial summary judgment. *Id*. But the FWF's counsel declined the invitation and asked permission to sit down:

> THE COURT: . . . I guess we need to go to our other motions. It's 11:45. How do y'all want to proceed? Mr. Guest?
>
> MR. GUEST: Well, again, if that's the basis of your ruling, I don't think we have anything to argue about, if that's what you're intending to do.
>
> THE COURT: That is my ruling, yes, sir. That is my—
>
> MR. GUEST: Well, then I think I should sit down. May I?

THE COURT: Anything further?

Id. The court did not announce a ruling on the FWF's motion or indicate that it intended to rule on the motion. *Id*. The court considered its ruling on the question of law raised in the FDE's motion as the "core question in the case" and requested a proposed order that would be "final" and "reviewable." R. 5163–65. It noted that its ruling should be "reviewed before we proceed further." R. 5165. The parties agreed; the trial scheduled for July 2018 was canceled, and the court directed the FWF's counsel to prepare a proposed order on the FDE's motion. R. 5163–65.

The court entered its final judgment on June 28, 2018. R. 5207–17. The court concluded that, under the "plain meaning" of section 28(b)(1), dedicated funds "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." R. 5209. "The clear intent" of article X, section 28 "was to create a trust fund to purchase new conservation lands and to take care of them." R. 5211.

The court, moreover, treated all Plaintiffs and all challenges in both cases as one. It entered judgment in favor of "all Plaintiffs," even though the FWF had not moved for final summary judgment, or argued its motion for partial summary judgment, or asserted the FDE's theory. R. 5213. It compiled into a single list all appropriations challenged in any operative pleading in either case (including those

that the FDE did not challenge, and those not raised in any dispositive motion) and invalidated all of them in one declaration entered in favor of all Plaintiffs. R. 5214.

The final judgment also found that dedicated funds had been commingled with general revenue funds in violation of article X, section 28(c), R. 5212—even though no party had pleaded that claim, R. 3542–3649, 6038–58, 6227–43, and even though Defendants had objected to its consideration as soon as it was raised (for the first and only time) in the FDE's motion for summary judgment, R. 6472–73, 4718–19. The final judgment also entered two injunctions that Plaintiffs did not request in their pleadings or in their motions: one that prohibits the Legislature from appropriating funds from the LATF unless the appropriations bill contains "clear language" that limits expenditures to constitutionally authorized purposes, and another that compels agencies that expend funds appropriated from the LATF to "track expenditures to ensure they are being made" constitutionally. R. 5213–14.

The Legislative Parties protested that the final judgment violated their right to procedural due process. Before it was entered, when Plaintiffs first submitted a 24-page proposed final judgment that wandered far from the trial court's oral ruling and invited the court to commit a host of due-process violations, R. 5083–5107, the Legislative Parties objected in three urgent letters to the court, R. 5109–11, 5193–95, 5204–06. Once the court entered its judgment, Defendants argued in a motion for rehearing that the court had violated due process when it decided an

unpleaded claim, issued two unrequested injunctions, entered final judgment in favor of a party that moved only for partial summary judgment and failed to argue even that motion at the hearing, and invalidated five appropriations that no party had challenged in any motion. R. 5685–5714. Given the violations of due process, the Legislative Parties also moved to disqualify the trial judge. R. 5259–86. The trial court denied both motions, R. 5965–69, and this appeal followed, R. 5970–90.

SUMMARY OF ARGUMENT

Nothing in article X, section 28 restricts restoration, management, and other non-acquisition functions to lands acquired since July 1, 2015—or even to lands in state ownership. The constitutional text itself prescribes the limits on expenditures of dedicated funds, and the trial court's addition of unwritten limitations was error.

The trial court's reading drastically curtails the expressly stated purposes of article X, section 28. A broad range of conservation purposes that have properly been funded from the LATF—including restoration of springs, beaches, and the Everglades—are ineligible to receive those funds under the trial court's reading. By restricting the purposes of LATF funds to (i) land acquisition; and (ii) the mere upkeep and maintenance of lands acquired since July 1, 2015, the trial court's interpretation forces virtually all of the dedicated funds—a projected $730 million next year (apart from amounts set aside for debt service)—to be expended for land acquisition. It thus creates a land-acquisition program of unprecedented magnitude

while depriving essential restoration and management efforts of their established funding source. As a consequence, it compels the Legislature either to raise $730 million in new revenue to fund programs that the LATF has traditionally funded, or to decrease state expenditures to account for the diversion of so much revenue.

None of these consequences was contemplated before the voters adopted Amendment 1. The trial court adopted a new interpretation wholly inconsistent with that articulated by the Sponsor and the FIEC, and it thus rendered the FIEC's financial impact statement—which the Florida Supreme Court approved—false and misleading. The trial court's readiness to disregard the FIEC's well-advised assessment of Amendment 1's impacts compromises the integrity of the FIEC process and renders future voter reliance on financial impact statements perilous.

The trial court also erred when it found that LATF funds were commingled with General Revenue. This claim was never pleaded, and all Defendants objected to its adjudication. And there was no evidence in the summary-judgment record to suggest that funds were commingled, while the only probative evidence before the court—an affidavit of the Staff Director of the Florida House of Representatives' Appropriations Committee—squarely affirmed that funds were not commingled.

The trial court's issuance of an injunction prohibiting the appropriation of LATF funds unless certain "clear language" is included in the appropriations bill was equally erroneous. Because Plaintiffs never requested such an injunction in

any pleading or even in a motion, its issuance violated procedural due process. In addition, an injunction that prohibits legislative action *ex ante*, or conditions the future exercise of legislative power on compliance with certain conditions, violates Florida's strict separation of powers. Courts may review legislation once enacted, but may not dictate in advance what legislation should or should not be enacted.

Because this appeal presents a question of law, and because the FWF has abandoned its separate claims and separate theory, this Court should reverse and remand with instructions to enter final judgment in favor of all Defendants. But if the Court remands for further proceedings, it should first reverse the denial of the Legislative Parties' motion for disqualification. The final judgment committed systematic and fundamental violations of procedural due process—including the adjudication of an unpleaded claim, the issuance of unrequested injunctions, and the invalidation of appropriations not challenged in any motion—that would cause a reasonable person to fear that future proceedings would not be fair and impartial.

STANDARD OF REVIEW

Questions of constitutional law and orders that grant summary judgment are reviewed de novo, *Treasure Coast Marina, LC v. City of Fort Pierce*, 219 So. 3d 793, 795, 802 n.13 (Fla. 2017), as are orders that deny motions for disqualification, *Fla. Carry, Inc. v. Thrasher*, 248 So. 3d 253, 263 (Fla. 1st DCA 2018).

Legislative acts are presumed constitutional, and plaintiffs who challenge

them "carry a heavy burden of persuasion." *Robinson v. Stewart*, 161 So. 3d 589, 591 (Fla. 1st DCA 2015). "It is no small matter for one branch of the government to annul the formal exercise by another of power committed to" another. *Greater Loretta Improvement Ass'n v. State ex rel. Boone*, 234 So. 2d 665, 670 (Fla. 1970). To overcome the presumption of validity, challengers must satisfy the exacting standard required for a criminal conviction; they must show that the challenged law is invalid "beyond a reasonable doubt." *Lewis v. Leon Cty.*, 73 So. 3d 151, 153 (Fla. 2011). If even a reasonable doubt remains, then the challenged law is valid.

ARGUMENT

The trial court imposed an unwritten limitation onto article X, section 28(b) when it found that restoration, management, and other constitutionally authorized non-acquisition functions are narrowly limited to lands acquired since July 1, 2015. That restriction finds no support in the Constitution as written and eviscerates a clear constitutional authorization to fund such critically important conservation purposes as restoration of the Everglades. To assist the Court's resolution of this appeal, the Legislative Parties begin with an overview of article X, section 28(b).

Overview of Section 28(b). Section 28(b) identifies the purposes for which funds in the LATF may be expended. It consists of two paragraphs. The first sets forth a range of conservation purposes that LATF expenditures may serve. The second authorizes expenditures for debt service on certain environmental bonds.

Punctuation dictates the basic structure of section 28(b)(1).[4] Section 28(b)(1) begins by stating that funds may be "expended" to "finance or refinance." Those words are followed by a colon. The purpose of the colon is to introduce a list, each item of which is separated from the next by a semicolon that marks the conclusion of one item and the beginning of the next.[5] The first enumerated item mentions "acquisition," but the next eight items do not. Those items proceed directly from the words "finance or refinance." "Finance" is broader than acquisition; it means to "provide funds or capital for."[6] Thus, funds may be provided to construct a trail, renourish a beach, or preserve a historic site—separate and apart from acquisition.

The words "together with" link the enumerated places specified in section 28(b)(1)—from wildlife management areas to geologic sites—to "management." Funds may be expended to manage those places; "management" gathers meaning from the enumeration that precedes it. *See Deal v. United States*, 508 U.S. 129, 132

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[4] Courts adhere to the rules of grammar and punctuation. *State v. Bodden*, 877 So. 2d 680, 685 (Fla. 2004); *City of Jacksonville v. Cont'l Can Co.*, 151 So. 488, 489 (Fla. 1933). The text should be given a "reasonable meaning" that accords with its "grammatical structure." *The Justice Coal. v. The First Dist. Court of Appeal Judicial Nominating Comm'n,* 823 So. 2d 185, 190 (Fla. 1st DCA 2002).

[5] GOV'T PRINTING OFFICE, STYLE MANUAL §§ 8.27, 8.148 (2016); BRYAN A. GARNER, THE CHICAGO GUIDE TO GRAMMAR, USAGE, AND PUNCTUATION §§ 476, 481 (2016); SIDNEY GREENBAUM, OXFORD ENGLISH GRAMMAR §§ 11.14, 11.17 (1996); *accord* R. 4761 (sponsor testimony regarding the colon and semicolons).

[6] MERRIAM-WEBSTER DICTIONARY, https://www.merriam-webster.com; *accord* BLACK'S LAW DICTIONARY (10th ed. 2014) (defining "finance" to mean "raise or provide funds").

(1993) (noting that the meaning of a word is "drawn from the context in which it is used"), *quoted in Haddock v. Carmody*, 1 So. 3d 1133, 1137 (Fla. 1st DCA 2013).

The "restoration of natural systems," such as rivers, lakes, forests, beaches, estuaries, and springs, is a broad and vital element of section 28(b)(1). It allows the State to fund critically important efforts to recover degraded natural communities, such as the Everglades. The FWF's expert, Jim Stevenson, a former chief naturalist at the Florida Department of Environmental Protection, opined that "restoration" describes "the process of assisting the recovery and natural functioning of degraded natural communities to desired future condition," while "improvements" are "similar to restoration but on a smaller, less intense scale"—such as "small-scale vegetative management activities or minor habitat manipulation." R. 4945. Last, "enhancement of public access and recreational enjoyment of conservation lands" permits expenditures to provide opportunities to the public to hunt, swim, fish, view wildlife, and otherwise access and enjoy lands set aside for conservation.

Section 28(b) does not prescribe an allocation of funds among its specified purposes. How much money is expended for any particular purpose is a question reserved first to legislative discretion in the enactment of appropriations and then to agencies that make expenditure decisions consistent with those appropriations.

I. THE CONSTITUTION DOES NOT RESTRICT RESTORATION, MANAGEMENT, AND OTHER CONSTITUTIONALLY AUTHORIZED NON-ACQUISITION FUNCTIONS TO LANDS ACQUIRED SINCE JULY 1, 2015.

A. The Trial Court Imposed a Drastic, Unwritten Limitation to Invalidate 185 Expired Appropriations.

The trial court imposed an unwritten limitation to invalidate 185 legislative appropriations worth more than $420 million. Contrary to the trial court's reading, the Constitution does not restrict management, restoration, improvement, and other non-acquisition functions to lands acquired since July 1, 2015—or even to lands in state ownership. Rather, the constitutional text itself identifies the permissible scope of the functions it authorizes, without the aid of arbitrary and extra-textual restrictions. Because the trial court imposed an unwritten limitation not contained in the Constitution as written, the entry of summary judgment should be vacated.

The constitutional text does not mention a time restriction. It contains no restrictive language that limits non-acquisition activities—such as management, restoration, and the enhancement of public access and recreational enjoyment—to state lands acquired after a certain date. Of course, the drafters of section 28(b)(1) could have added such a limitation. But they did not, and voters adopted a proposal that promised to set funds aside for critical restoration and management purposes.

In constitutional interpretation, courts endeavor to ascertain the intent of the voters and drafters. *Brinkmann v. Francois*, 184 So. 3d 504, 509–10 (Fla. 2016). The search for intent does not, however, permit courts to substitute conjecture and

intuition for sound legal method. If the text is susceptible of an objective meaning and reveals no intractable ambiguity, then the search for intent begins and ends with the text. *Id*.; *accord Lawnwood Med. Ctr., Inc. v. Seeger*, 990 So. 2d 503, 510 (Fla. 2008) ("We are called on to construe the terms of the Constitution, an instrument from the people, and we are to effectuate their purpose from the words employed in the document." (quoting *Ervin v. Collins*, 85 So. 2d 852 (Fla. 1956))). Here, the text accords no significance either to state ownership or to the date of acquisition. Its silence refutes the trial court's interpretation—and ends the inquiry.

The trial court's interpretation transforms article X, section 28, which was designed to promote a broad range of important conservation purposes, such as Everglades restoration, into a narrow land-acquisition program of unprecedented magnitude. In recent years, the Legislature has made significant appropriations from the LATF to restore natural systems, including, in the current fiscal year, $50 million for beach restoration, $50 million for springs restoration, and $230 million for Everglades restoration. Ch. 2018-9, at 239, 241–42, Laws of Fla.[7] Because these restoration efforts do not generally occur on lands acquired since July 1, 2015, virtually none would qualify under the trial court's reading. R. 4965–66, 5931–51. For example, Everglades restoration involves the design, construction,

[7] The Everglades Agricultural Area Storage Reservoir—which Congress recently approved, *see* America's Water Infrastructure Act of 2018, Pub. L. No. 115-270, § 1308, 132 Stat. 3765, 3819 (2018)—is planned to be constructed on land, less than five percent of which has been acquired since July 1, 2015. R. 5934.

and operation of physical structures that regulate the flow and distribution of water throughout the Greater Everglades Ecosystem. R. 5933. All or almost all of these projects are occurring—or are planned to occur—entirely or almost entirely on lands not acquired since July 1, 2015. *Id*. The trial court's reading would deprive these critical projects of their funding source and imperil their continued funding.

By severely limiting expenditures for restoration, management, and other non-acquisition functions, the trial court's interpretation forces LATF funds to flow almost exclusively to land acquisition. The Revenue Estimating Conference estimates that dedicated funds will be $730 million next year (after debt service).[8] That amount dwarfs the $300 million that, at the pinnacle of the Florida Forever program, the State annually appropriated for land acquisition. R. 317. With $730 million diverted to land acquisition, the trial court's reading deprives critically important programs (such as Everglades restoration) of their historical funding source, and creates a $730 million shortfall in funds available for those programs.

Despite these drastic consequences, the trial court cited no express language that restricts non-acquisition functions to lands acquired since July 1, 2015. Rather, the trial court relied on inferences from two sources: (i) the word "acquisition" in the name of the trust fund; and (ii) the words "together with," which precede the

[8] REVENUE ESTIMATING CONFERENCE, DOCUMENTARY STAMP TAX COLLECTIONS AND DISTRIBUTIONS, EXECUTIVE SUMMARY 3, http://edr.state.fl.us/Content/conferences/docstamp/docstampexecsummary.pdf.

word "management" in section 28(b)(1). R. 5209–10. These slender reeds do not support inferences that so fundamentally reshape the Constitution's plain meaning.

The trust fund's name—the Land Acquisition Trust Fund—does not impose a drastic limitation on non-acquisition functions. The trust fund's purposes are not left to implication, but are delineated in section 28(b). Despite the trust fund's name, the Constitution expressly authorizes funds to be expended for certain non-acquisition purposes, such as management and restoration. It delineates the trust fund's acquisition and non-acquisition purposes and leaves the allocation of funds to legislative discretion. Just as a legal definition controls the meaning of a defined term, *Baker v. State*, 636 So. 2d 1342, 1343–44 (Fla. 1994), the constitutional definition of the LATF's purposes is binding—no matter what the fund is labeled.

The LATF existed for decades before Amendment 1 utilized it, and its name is a relic of the trust fund's earlier iteration. The Legislature first created the LATF in 1963. *See* Ch. 63-36, § 4, Laws of Fla. Amendment 1 redefined the purposes of the LATF, but did not rename the trust fund. Its use of a preexisting trust fund does not negate the now controlling, constitutional delineation of the LATF's purposes.

Nor do the words "together with" limit non-acquisition functions to lands acquired since July 1, 2015. Those words connect the word "management" to the preceding enumeration of places. It thus permits funds to be expended to manage those *types* of places—for example, beaches and shores and outdoor recreation

lands. But the Constitution does not imply that expenditures for management—or other non-acquisition purposes—are restricted to lands acquired since July 1, 2015.

The trial court concluded that, because acquisition is the first enumerated purpose, land must be acquired under section 28(b)(1) before it may be managed or restored. But the text furnishes no evidence that its enumeration is chronological. Rather, it specifies exactly *where* each non-acquisition function may be performed. Funds may be expended to restore "natural systems," to purchase resources for "conservation lands," to manage the types of places specified in section 28(b)(1), and to enhance public access and recreational enjoyment of "conservation lands." The trial court added new restrictions to the limitations already set forth in the text.

The constitutional text does not even insist on state ownership of the land. It expressly identifies the limitations applicable to each authorized purpose, and state ownership is not among them. For example, the textual limitation on "restoration of natural systems" is not that restoration efforts take place on state lands, but that they seek to restore "natural systems." The FWF's expert, Mr. Stevenson, defined "natural systems" to include rivers, springs, forests, lakes, estuaries, and beaches, and agreed that restoration of natural systems can require activities on private lands where pollutants such as agricultural fertilizers originate. R. 4932, 4943–44, 4950.

Similarly, the "enhancement of public access or recreational enjoyment of conservation lands" is not restricted to state-owned lands, but to "conservation

lands," which includes some private lands. Mr. Stevenson defined "conservation lands" to mean public or private property, (i) a significant portion of which is undeveloped and retains most of the attributes of a natural condition; and (ii) the manager of which demonstrates a formal commitment to conservation of the land in its natural condition. R. 4949. He testified that experts and laymen would define "conservation lands" to include (i) federal lands, such as the Ocala National Forest; (ii) lands owned by counties or water management districts, such as the Kissimmee River Management Area; (iii) private lands committed to conservation, such as the Corkscrew Swamp Sanctuary owned by the National Audubon Society; (iv) all beaches, including privately owned beaches seaward of the coastal construction control line (development of which is strictly regulated) and (iv) rivers, bays, lakes, and other sovereign submerged lands, which the State, as sovereign, holds in trust for all people under article X, section 11, Florida Constitution. R. 4939–40, 4954.[9]

The FDE was unable even to explain its argument below without blatantly rewriting the constitutional text. It repeatedly argued that funds may be expended to acquire land and to manage and restore lands "so acquired" or "so purchased"—all too plainly adding "so acquired" or "so purchased" where the voters had not.

[9] Unless the text indicates that a specialized meaning applies, courts accord words their ordinary, everyday meanings—the meanings that voters would have attributed to them. *Advisory Op. to Governor re Judicial Vacancy Due to Mandatory Ret.*, 940 So. 2d 1090, 1093 (Fla. 2006). Dictionaries are the principal guide to the usual and familiar meanings of words. *In re Advisory Op. to Att'y Gen. re Use of Marijuana for Certain Med. Conditions*, 132 So. 3d 786, 800 (Fla. 2014).

R. 6468–69, 6480, 6482, 6486–87. The Constitution does not say "so acquired" or "so purchased," and courts do not interpolate words into the Constitution to color its meaning. *Lawnwood Med. Ctr., Inc. v. Seeger*, 990 So. 2d 503, 510 (Fla. 2008).

The trial court, however, treated restoration, management, and other non-acquisition functions not as important constitutional purposes in themselves, but as mere ancillaries of new acquisitions of state lands. The constitutional text—the only authentic expression of voter intent—does not similarly subordinate these non-acquisition purposes. It was altogether appropriate for voters to support a dedication of funds to restore the State's degraded natural treasures, such as the Everglades or Wakulla Springs; to enhance public access to Florida's state forests or enjoyment of its state parks; or to manage the State's world-renowned beaches. As the Sponsor testified, one of the benefits of a broad proposal that embraced a range of conservation purposes was its broader appeal to more Floridians. R. 4773. By contrast, the trial court's interpretation imposes sweeping and arbitrary public-ownership and acquisition-date restrictions, ordains a massive new program fixated on land acquisition, and imposes heavy financial impacts never disclosed to voters.

The trial court's interpretation is especially implausible because it assumes that Amendment 1's authors left the most fundamental aspects of the constitutional scheme to implication. Under the trial court's reading, virtually all of the dedicated funds must be expended for land acquisition despite the Constitution's broadly

worded authorization to expend LATF funds for restoration and management. Consequences so drastic require stronger textual evidence, and are not implicit in the words "together with." Courts do not infer fundamental policy from words ill-suited to the task. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001) ("Congress . . . does not, one might say, hide elephants in mouseholes."). If the non-acquisition functions outlined in the Constitution were intended to be merely ancillary to new purchases of land, then the Constitution surely would have said so.

B. The Extrinsic Evidence on Which the Trial Court Relied Does Not Support Its Unwritten Limitation.

The trial court's reliance on extrinsic evidence—specifically, Amendment 1's ballot title and summary—is equally misguided. R. 5210. The ballot summary stated that funds would be dedicated "to acquire, restore, improve, and manage conservation lands." *Id*. Thus, it placed acquisition, restoration, improvement, and management—four purposes for which funds may be expended—on equal footing.

According to the trial court, the ballot summary advised voters that lands would be "acquired and then restored, improved and managed." *Id*. But the ballot summary did not say "and then"—or otherwise suggest that non-acquisition functions are contingent on or secondary to acquisition. It treated acquisition, restoration, improvement, and management as four equal and independent actions.

The trial court also cited the advisory opinion that approved Amendment 1's placement on the ballot, R. 5210, but that opinion neither states nor implies that

non-acquisition functions are restricted to lands acquired since July 1, 2015. *Advisory Op. to Att'y Gen. re Water & Land Conservation*, 123 So. 3d 47, 50 (Fla. 2013). The advisory opinion does not support the trial court's reading in any way.

C. The Extrinsic Evidence of the Broad Scope of Article X, Section 28(b)(1) Refutes the Trial Court's Unwritten Limitation on Non-Acquisition Activities.

If it were appropriate to consider extrinsic sources, then the FIEC process—which exists to provide accurate information to Florida voters—would furnish the best evidence. The FIEC studied Amendment 1 at four public meetings, received extensive information from the Sponsor, published detailed analyses of the likely financial impact, and prepared a financial impact statement for the ballot. R. 4773–74, 4874–75. Yet the trial court ignored the FIEC's well-informed evaluation and adopted a wholly contradictory interpretation—one with a dramatically different financial impact. In doing so, it rendered the financial impact statement misleading and undermined future reliance on the constitutionally mandated FIEC process.

The Sponsor informed the FIEC that Amendment 1 serves a wide range of broad purposes, reserves complete discretion to the Legislature to allocate funds among those broad purposes, and has no financial impact on state government. *See supra* Statement of the Case and Facts. The FIEC agreed and prepared a financial impact statement that informed voters of the potential of no impact. R. 4905. And the Florida Supreme Court approved the financial impact statement for the ballot.

The trial court's interpretation, however, imposes drastic financial impacts. It diverts $730 million in revenue to land acquisition and requires the Legislature, to balance the state budget, either to reduce other expenditures or increase state revenues by $730 million to compensate for the diversion of funds. Amy Baker, one of the FIEC's principals, testified that, if the FIEC had understood Amendment 1 to allow restoration and management only on land acquired since July 1, 2015, then it would have "completely changed" the FIEC's adopted findings. R. 4878.

Indeed, the Florida Supreme Court's approval of the FIEC's financial impact statement forecloses the trial court's reading, which cannot be reconciled with the financial impact statement that the Florida Supreme Court reviewed and approved.

The Sponsor's statements to the FIEC were consistent with its other public statements. Its campaign depicted a range of broad purposes that trust funds might support. At no time did the Sponsor, the FIEC, or the Florida Supreme Court hint that Amendment 1 had a narrow, land-acquisition focus. And once Amendment 1 was adopted, the Sponsor recommended that more than 75 percent of trust funds be appropriated for purposes other than Florida Forever. As the Sponsor testified:

> It would have been very easy for us to write a constitutional amendment that addressed just land acquisition. . . . But we know that there are other important conservation needs in Florida, including management and restoration, the Everglades restoration is an example of that. . . . And so, we wanted to make sure the Amendment would provide not only for land conservation, . . . but also management and restoration.

R. 4772.

The integrity of the FIEC process and voter reliance on the FIEC's financial impact statements depend on judicial respect for the FIEC's conclusions. If the FIEC's conclusions are disregarded and rendered false, then reliance on financial impact statements will become perilous, and future amendment sponsors will be encouraged to manipulate the FIEC and advocate different interpretations before and after an election. The trial court erroneously ignored the product of the FIEC process and gave no weight to the FIEC's well-informed, professional assessment.

II. THE TRIAL COURT ERRED IN ADJUDICATING AN UNPLEADED COMMINGLING CLAIM AND IN FINDING THAT FUNDS WERE COMMINGLED.

For multiple reasons, the court below erred in finding that dedicated funds had been commingled with general revenue in violation of article X, section 28(c). The claim was never pleaded. The trial court found commingling on grounds no party argued, and to which Defendants therefore had no opportunity to respond. And it relied on interrogatory answers that did not support its factual finding of commingling, while it ignored the only probative evidence before it: the affidavit testimony of legislative staff that squarely denied that funds had been commingled.

First, the FDE and FWF did not plead a commingling claim, and Defendants never consented to its adjudication. The trial court's finding of unconstitutional commingling was therefore improper, and a violation of procedural due process.

Pleadings provide parties "prior, meaningful notice of the claims" at issue.

Tracey v. Wells Fargo Bank, N.A., --- So. 3d ----, No. 2D16-5091, 2018 WL 1440058, at *2 (Fla. 2d DCA Mar. 23, 2018). A court has no jurisdiction to decide unpleaded matters. *Flemming v. Flemming*, 742 So. 2d 843, 844 (Fla. 1st DCA 1999). To decide such matters absent consent "is violative of a party's due process rights." *Carroll & Assocs., P.A. v. Galindo*, 864 So. 2d 24, 29 (Fla. 3d DCA 2003).

Plaintiffs never alleged that funds were commingled. The claim was raised for the first and only time in the FDE's motion for summary judgment. R. 6465–66. In response, Defendants objected that consideration of this new and unpleaded claim would violate due process, R. 4718, and the FDE made no mention of the new claim at the hearing on its motion, R. 5114–66. The trial court's adjudication of the unpleaded claim over Defendants' immediate objection violated due process.

Second, no evidence supports the finding that funds were commingled. To "commingle" means to "combine (funds or property) into a common fund," MERRIAM-WEBSTER DICTIONARY, https://www.merriam-webster.com, or to "put together (as funds or property) into one mass," BLACK'S LAW DICTIONARY (10th ed. 2014). The prohibition against commingling ensures that funds in the LATF are not transferred, or "swept," into the General Revenue Fund, from which they might be expended without regard to the restrictions on expenditures from the LATF.

The trial court interpreted the interrogatory answers of three agencies to "essentially state" that funds were commingled, R. 5212, but those interrogatory

answers say no such thing. The interrogatories requested detailed analyses of tens or hundreds of thousands of expenditures, and the agencies responded that it would be unduly burdensome to categorize so many expenditures in the manner required by the interrogatories. R. 6628–51. The interrogatory answers did not even imply that LATF funds had been commingled with money in the General Revenue Fund.

Third, the only probative evidence before the court flatly refuted a finding that funds had been commingled. Defendants filed the affidavit of JoAnne Leznoff, then the Staff Director of the Appropriations Committee in the Florida House of Representatives. R. 4968–69. Ms. Leznoff testified that, when a line item in the state budget contains appropriations from multiple sources, the appropriations "do not, as a factual matter, cause moneys deposited in those funds to be commingled." R. 4969 ¶ 2. "Multiple funds for a single line item remain segregated and distinct"; there is "no blending, combining, mixing, or commingling of those funds," and each fund, including the LATF, "is budgeted and accounted for separately." *Id*. It was error to grant summary judgment in the teeth of explicit, opposing evidence.

Fourth, the court found commingling on grounds the FDE never argued. The FDE's motion did not rely on interrogatory answers to establish commingling. Rather, it claimed (incorrectly) that funds are commingled whenever a line item in the state budget contains appropriations from more than one source. R. 6472–73, 6494. The Legislative Parties thus had no notice and no opportunity to be heard—

the "benchmarks of procedural due process," *Williams v. Salem Free Will Baptist Church*, 784 So. 2d 1232, 1234 (Fla. 1st DCA 2001)—in response to the court's theory that the interrogatory answers "essentially" admitted commingling. R. 5212.

III. THE TRIAL COURT ERRONEOUSLY ISSUED AN UNREQUESTED INJUNCTION THAT VIOLATES THE SEPARATION OF POWERS.

The trial court erroneously enjoined the Legislative Parties from enacting any appropriation from the LATF to any "entity that receives funding from any other source" unless the appropriations bill contains "clear language" that restricts use of the LATF funds to the purposes authorized by article X, section 28. R. 5213. The court erred because (i) no party requested the injunction; and (ii) an injunction that prohibits legislative action *ex ante*—or which conditions legislative action on the enactment of particular language into law—violates the separation of powers.

A. A Grant of Unrequested Relief Violates Due Process.

"It is well settled that courts are not authorized to grant relief not requested in the pleadings." *Martin v. Lee*, 219 So. 3d 1024, 1025 (Fla. 1st DCA 2017). "[G]ranting relief, which was neither requested by appropriate pleadings, nor tried by consent, is a violation of due process." *Bayview Loan Servicing, LLC v. Newell*, 231 So. 3d 588, 590 (Fla. 1st DCA 2017) (quoting *Bank of Am., N.A. v. Nash*, 200 So. 3d 131, 135 (Fla. 5th DCA 2016)); *accord Wachovia Mortg. Corp. v. Posti*, 166 So. 3d 944, 945 (Fla. 4th DCA 2015). A boilerplate request for just and proper relief is insufficient. *Gear v. Gear,* 205 So. 3d 835, 836–37 (Fla. 2d DCA 2016).

Plaintiffs' pleadings did not request an injunction that prohibits legislative action or forces the Legislature to include certain "language" in future legislation. Because the injunction was not requested, it was improperly granted. *Cardinal Inv. Grp., Inc. v. Giles*, 813 So. 2d 262, 263 (Fla. 4th DCA 2002) ("The pleadings did not request this type of injunctive relief, and courts are not authorized to grant relief not requested in the pleadings."). Nor did Plaintiffs request *any* injunctive relief in their dispositive motions. R. 3882–83, 6494–95. The Legislative Parties were denied the notice and opportunity to be heard that due process guarantees.

B. The Injunction Violates the Separation of Powers.

An injunction that prohibits the exercise of the appropriations power, or conditions the exercise of that power on the enactment of certain "language" into law, violates the separation of powers. As this Court recently recognized, the judicial branch may not dictate to the legislative branch what legislation it may or may not write—or how to write it. When it does, the court becomes the lawgiver.

The Florida Constitution vests the "legislative power of the state" in the Legislature. Art. III, § 1, Fla. Const. The "legislative power" includes the power to enact laws and to appropriate public funds. *Fla. House of Representatives v. Crist*, 999 So. 2d 601, 615 (Fla. 2008) ("Enacting laws . . . is quintessentially a legislative function."); *Corcoran v. Geffin*, 250 So. 3d 779, 784 (Fla. 1st DCA 2018) ("The quintessential legislative power to appropriate funds is exclusive and plenary

and has resided in the Legislature alone for 179 years." (internal marks omitted)).

The Constitution also mandates a strict separation of powers. Art. II, § 3, Fla. Const. The separation of powers embodies the vital principle that "no branch may encroach upon the powers of another," *Chiles v. Children A, B, C, D, E, & F*, 589 So. 2d 260, 264 (Fla. 1991), and applies "as vigorously to the judicial branch as it does to the other two branches," *Citizens for Strong Sch., Inc. v. Fla. State Bd. of Educ.*, 232 So. 3d 1163, 1170 (Fla. 1st DCA 2017). Courts cannot "legislate that which necessarily must originate, if it is to be law, with the legislature." *Fields v. Kirton*, 961 So. 2d 1127, 1130 (Fla. 4th DCA 2007). And the Constitution squarely denies the judiciary any "power to fix appropriations." Art. V, § 14(d), Fla. Const.

Nor may a court prohibit legislative action *ex ante*. "An order that prohibits future legislative action . . . offends the constitutional separation of powers no less than one that compels legislative action." *Corcoran*, 250 So. 3d at 784. While courts may, in an appropriate case, review the final product of legislative action, the judicial branch has no more authority to prohibit the future enactment of laws, or to condition the future enactment of laws on the inclusion of certain "language," than the legislative branch has to prohibit the future issuance of court orders, or to condition the issuance of future court orders on the inclusion of certain "language."

In *Corcoran*, the plaintiffs sought an injunction prohibiting the enactment of any appropriations bill that did not appropriate certain matching funds for state

colleges and universities. 250 So. 3d at 781. This Court held that an injunction against the enactment of legislation would violate Florida's separation of powers. *Id*. at 784 ("An injunction that freezes the appropriations process in order to pressure the Legislature to make appropriations under the matching statutes is a direct interference with the Legislature's constitutional powers."); *see also Fla. Senate v. Fla. Pub. Emps. Council 79*, 784 So. 2d 404, 408 (Fla. 2001) ("[I]t is only the final product of the legislative process that is subject to judicial review.").

Like the proposed injunction in *Corcoran*, the injunction here purports to prohibit the enactment of appropriations unless certain court-ordered content is included in the appropriations bill. It therefore prohibits legislative action *ex ante*, or prescribes the conditions on which legislative power may be exercised. In either case, the injunction usurps legislative power to make law—that is, to say what the law shall be. Because the injunction exceeds the authority of the judicial branch and violates the strict separation of powers, this Court should quash the injunction.

* * *

For the reasons stated in Parts I through III above, this Court should vacate the trial court's entry of summary judgment and remand with instructions to enter final judgment in Defendants' favor. Further proceedings are unnecessary because the FDE presented only a question of law that this appeal will decide, and the FWF, while it advanced a different theory, voluntarily abandoned that theory when

it declined to proceed with its motion for partial summary judgment and, rather than seek a ruling on its claims and its theory, drafted a proposed final judgment that terminated not only the FDE's case, but also its own. R. 5162–63, 5083–5107. Having inserted itself into the FDE's final judgment, the FWF may not now return to the theory it so freely jettisoned the minute the court granted the FDE's motion.

IV. BECAUSE IT VIOLATED THE LEGISLATIVE PARTIES' RIGHT TO PROCEDURAL DUE PROCESS IN FUNDAMENTAL WAYS, THE TRIAL COURT ERRED IN DENYING A MOTION FOR DISQUALIFICATION.

If, however, this Court remands for further proceedings, it should reverse the trial court's erroneous denial of the Legislative Parties' motion for disqualification. This Court has concluded that a violation of due process warrants disqualification. Where a court violates basic principles of due process not only once, but multiple times over repeated objections, disqualification must follow as a matter of course.

A. The Trial Court Committed Repeated Violations of Due Process.

In 2015, the Legislature enacted a state budget after an exhaustive review by the FIEC and the Sponsor of the meaning of Amendment 1, and after the Florida Supreme Court had approved the FIEC's financial impact statement. Not once in those proceedings was it suggested that Amendment 1 advances narrow purposes, or authorizes only land acquisition and the maintenance of newly acquired lands.

Preoccupied with land acquisition, Plaintiffs unveiled their theories much later: after voters had adopted Amendment 1 and after the Legislature had enacted

a state budget. Compelled to litigate, the Legislative Parties prepared diligently and amassed a sizable record in anticipation of trial. On the eve of trial, the court below granted summary judgment, invalidated 185 appropriations, and canceled the trial.

But this was only the beginning. After the hearing, Plaintiffs submitted to the trial court a proposed final judgment that bore little resemblance to the trial court's oral ruling. R. 5083–5107, 5161–62. Plaintiffs' 24-page draft proposed a spate of due-process violations, from the adjudication of an unpleaded claim to the issuance of unrequested injunctions. R. 5083–5107. In three urgent letters to the trial court, the Legislative Parties cautioned against these proposed violations of due process. R. 5109–11, 5193–95, 5204–05. The court revised Plaintiffs' draft but ignored the letters and retained each of the proposed violations against which the Legislative Parties had protested. R. 5083–5107, 5207–17. Not only did the trial court invalidate 185 appropriations and deny the Legislative Parties their day in court, but it also punctuated that ruling with systematic violations of due process.

1. The Trial Court's Adjudication of an Unpleaded Claim Violated Due Process.

The trial court found a violation of the commingling provision in article X, section 28(c), but Plaintiffs never pleaded that claim. In adjudicating a claim that Plaintiffs did not plead, the court committed a textbook violation of due process.

As explained more fully above, *see supra* Part II, claims must be pleaded, and the adjudication of unpleaded claims without consent violates due process.

Mizrahi v. Mizrahi, 867 So. 2d 1211, 1213 (Fla. 3d DCA 2004); *Dep't of Envtl. Reg'n v. Montco Research Prod., Inc.*, 489 So. 2d 771, 773 (Fla. 5th DCA 1986).

Plaintiffs did not plead that funds were commingled. That claim was raised for the first and only time in the FDE's motion for summary judgment. R. 6472–73. Defendants immediately objected. R. 4718. At the hearing, the FDE did not argue its unpleaded claim, and the court did not address it. R. 5114–66. When Plaintiffs slipped a finding of commingling into their proposed final judgment, R. 5101–03, the Legislative Parties objected. In a letter to the court, the Legislative Parties noted that the commingling claim had not been pleaded and that a decision on "an unpleaded matter without consent . . . violates basic due process." R. 5110.

The trial court adopted the proposed finding anyway and determined that funds had been commingled. In deciding a claim that Plaintiffs did not plead, the court violated procedural due process. And in deciding that unpleaded claim on grounds that no party had ever asserted, *see supra* Part II, the trial court denied the Legislative Parties the right to be heard and compounded the due-process violation.

2. The Trial Court's Grant of Unrequested Injunctive Relief Violated Due Process.

The trial court next violated due process when it entered two injunctions that Plaintiffs never requested. The court enjoined the Legislature from appropriating any LATF funds unless certain "clear language" is enacted into law, R. 5213, and ordered the state agencies that expend LATF funds to "track expenditures," R.

5214. Because Plaintiffs did not request those injunctions in their pleadings or their motions (which sought only declaratory relief), their issuance violated due process.

As noted above, *see supra* Part III.A., courts are not entitled to grant relief that the parties do not requested in their pleadings, *Martin v. Lee*, 219 So. 3d 1024, 1025 (Fla. 1st DCA 2017). The entry of unrequested relief violates due process. *Bayview Loan Servicing, LLC v. Newell*, 231 So. 3d 588, 590 (Fla. 1st DCA 2017).

Plaintiffs' pleadings did not request the injunctions that the trial court issued. The issuance of those injunctions therefore violated due process. *Cardinal Inv. Grp., Inc. v. Giles*, 813 So. 2d 262, 263 (Fla. 4th DCA 2002) ("The pleadings did not request this type of injunctive relief, and courts are not authorized to grant relief not requested in the pleadings."). Nor did Plaintiffs request such relief in their motions, which sought only declaratory relief. R. 3882–83, 6494. When the unrequested relief first appeared in Plaintiffs' proposed final judgment, R. 5102–03, the Legislative Parties objected in letters to the court, R. 5194–95, 5205–06.

Rather than admonish Plaintiffs' insertion of unrequested injunctions into their proposed final judgment, *see Land Dev. Servs., Inc. v. Gulf View Townhomes, LLC*, 75 So. 3d 865, 871 (Fla. 2d DCA 2011) (admonishing counsel for "including relief in a proposed final judgment that it did not request in its motion or at the hearing"), the court entered the injunctions and violated due process, R. 5213–14.

3. The Trial Court's Grant of Unrequested Declaratory Relief Violated Due Process.

The trial court likewise violated due process when it granted declaratory relief indiscriminately to all Plaintiffs, regardless of which Plaintiff requested it. The trial court lumped all specific appropriations that *any* party challenged into one declaratory judgment in favor of *all* Plaintiffs. R. 5214. Thus, the court granted declaratory relief to the FWF as to 97 appropriations that the FDE challenged, but the FWF did not. R. 3557–66, 5214. And it granted declaratory relief to the FDE as to eight appropriations that the FWF challenged, but the FDE did not. R. 5214, 6047-58, 6234–42.[10] This indiscriminate award to all Plaintiffs of declaratory relief requested by any one Plaintiff violates procedural due process because courts may not grant a party relief that the party did not request. *Newell*, 231 So. 3d at 590.

4. The Trial Court's Entry of Final Judgment in Favor of Parties That Did Not Move for It Violated Due Process.

The FWF did not move for a final judgment, but only for partial summary judgment as to only nine of the 114 appropriations challenged in its complaint—that is, eight percent of its case. R. 3557–66, 3882–83. The trial court nevertheless

[10] Specifically, the FWF did not challenge any of the 74 appropriations for Fiscal Year 2016–17 that the trial court invalidated, nor any of the following 23 appropriations for Fiscal Year 2015–16: Specific Appropriations 1413, 1420, 1705, 1706, 1757, 1759, 1765, 1769, 1772, 1778, 1780, 1788, 1790, 1794, 1795, 1796, 1808, 1813, 1818, 1820, 1843, 1845, or 3092. R. 3557–66. The FDE did not challenge the following eight appropriations for Fiscal Year 2015–16: Specific Appropriations 1414, 1416A, 1417, 3087, 3088, 3090, 3091, or 3022. R. 6047–58.

entered final summary judgment in favor of the FWF. The entry of final judgment in favor of a party that sought only partial summary judgment violates due process.

In *Hall v. Marion County Board of County Commissioners*, 236 So. 3d 1147 (Fla. 5th DCA 2018), the defendant moved for summary judgment as to one of two counts in the plaintiff's complaint. *Id*. at 1153–54. The trial court entered final summary judgment on all claims. *Id*. at 1153. On appeal, the court concluded that the entry of final summary judgment on all claims when the defendant had moved only for partial summary judgment denied the plaintiff due process. *Id*. at 1153–54.

Here too, the FWF sought only partial summary judgment. As to 105 of the 114 appropriations challenged in its complaint, the FWF did not seek summary judgment. The entry of a final judgment in favor of the FWF violated due process.

To justify its entry of final judgment in favor of all Plaintiffs in both cases, the trial court insisted that the parties had conceded that the court's ruling for FDE had disposed of the entire case. R. 5207–08, 5968. But the transcript is clear. The parties did not concede that the FWF was entitled to a judgment it did not request. They simply agreed (*after* the FWF had declined to argue its motion) that the trial should be canceled while the ruling for the FDE is reviewed on appeal. R. 5165.

The court also pointed to the consolidation of the two cases, stating that a judgment in favor of all Plaintiffs was necessary to avoid inconsistent results. R. 5968. But consolidation did not merge the two cases into one or permit the court to

grant the FWF a judgment it never requested, on a legal theory it never advanced. Nor does an interest in consistency permit or require a trial court to provide equal outcomes to parties that prosecute their cases differently and indeed inconsistently.

"Consolidation does not merge suits into a single cause or change the rights of the parties, or make those who are parties in one suit parties in another. Rather, each suit maintains its independent status with respect to the rights of the parties involved." *Santiago v. Mauna Loa Invs., LLC*, 189 So. 3d 752, 757 (Fla. 2016) (quoting *Shores Supply Co. v. Aetna Cas. & Sur. Co.*, 524 So. 2d 722, 725 (Fla. 3d DCA 1988)); *accord OneBeacon Ins. Co. v. Delta Fire Sprinklers, Inc.*, 898 So. 2d 113, 116 (Fla. 5th DCA 2005) (explaining that "consolidated cases do not lose their individual identities as distinct, separately-filed causes of action").

In *Santiago*, the Court held that a trial court may not examine a complaint filed in one consolidated case to determine the sufficiency of a complaint filed in the other consolidated case. 189 So. 3d at 757. It follows that a court may not look to a motion for summary judgment filed in one case, and thus enter final judgment in the other case as well. This is especially true here, where the FWF never moved for a final judgment, and, in its motion for partial summary judgment, advanced a theory that not only differed from, but conflicted with the FDE's successful theory. Consolidation did not enlarge the FWF's rights and entitle the FWF to more relief than it requested, or than it would have obtained absent consolidation. *Cf. CDI*

Contractors, LLC v. Allbrite Elec. Contractors, Inc., 836 So. 2d 1031, 1033 (Fla. 5th DCA 2002) ("Consolidation affects the procedure of the cases, but has no effect on the substantive rights of the parties . . . ."). In entering a final judgment in favor of the FWF, the trial court impermissibly merged two consolidated cases into one, divested them of their separate identities, and altered the rights of the parties.

Despite the Legislative Parties' objections, R. 5109–10, 5194, 5204–05, the court entered final judgment indiscriminately in favor of all Plaintiffs in both cases, and did so on a theory that the FWF never advanced. R. 5209–13. The FWF never argued—as the FDE did, and as the trial court found—that section 28(b) authorizes restoration and management only on lands acquired since July 1, 2015. R. 3551–56, 3848–49. The entry of final judgment in favor of parties that did not request it—on a legal theory those parties never asserted—violated procedural due process.

5. The Trial Court's Entry of Summary Judgment in Favor of the FWF Without a Hearing on the FWF's Motion for Partial Summary Judgment Violated Due Process.

The trial court also violated due process when it entered summary judgment in favor of the FWF without a hearing on the FWF's motion for partial summary judgment. On the date set aside for summary-judgment hearings, after the FDE's motion was granted, the FWF's counsel declined an invitation to argue the FWF's motion. In its final judgment, the court granted the unheard and unargued motion anyway, and did so on grounds not raised in the motion, contrary to due process.

The entry of summary judgment without a hearing on the motion violates due process. *Greene v. Seigle*, 745 So. 3d 411, 411 (Fla. 4th DCA 1999); *Kozich v. Hartford Ins. Co. of Midwest*, 609 So. 2d 147, 148 (Fla. 4th DCA 1992); *State Farm Fire & Cas. Co. v. Lezcano*, 22 So. 3d 632, 634 (Fla. 3d DCA 2009). Florida Rule of Civil Procedure 1.510(c) contemplates a hearing on a summary judgment motion, and a trial court has no discretion to dispense with the requirement of a hearing. *Chiu v. Wells Fargo Bank, N.A.*, 242 So. 3d 461, 463 (Fla. 3d DCA 2018).

In *Lezcano*, two plaintiffs insured under the same auto insurance policy were injured in the same accident. 22 So. 3d at 633. They brought the same allegations against the same insurer in separate suits, and both moved for summary judgment on the same issues. *Id*. The trial court conducted two hearings in one case and none in the other, but entered final summary judgment in favor of *both* plaintiffs. *Id*. The appellate court reversed, explaining that the trial court granted one of the motions "without conducting a hearing on the motion." *Id*. at 634. "A trial court's failure to conduct a hearing prior to ruling on the motion for summary judgment constitutes a denial of the due process guarantee of notice and an opportunity to be heard." *Id*.

Here, the trial court never conducted a hearing on the FWF's motion. After it granted the FDE's motion, it stated that "we need to go to our other motions." R. 5162–63. The court invited the FWF's counsel to proceed, but the FWF's counsel declined the invitation and asked permission to sit down. R. 5162–63. The trial

court did not hear the FWF's motion, rule on the FWF's motion, or indicate in any way that it intended to rule on the motion despite the FWF's choice not to proceed.

When Plaintiffs submitted a proposed final judgment that granted not only the FDE's motion but also the FWF's unargued motion, the Legislative Parties objected in three letters to the court. R. 5109–10, 5193–95, 5204–06. The letters emphasized that, because the two motions relied on different facts and different theories and were filed by different parties in different cases, the trial court's "resolution of the FDE Plaintiffs' case by no means resolves the FWF Plaintiffs' case," and the "ruling for the FDE Plaintiffs does not entitle the FWF Plaintiffs to final judgment as well." R. 5205. The Legislative Parties twice requested a hearing in the event the FWF sought a determination on its unheard motion. R. 5194, 5205.

The court granted the FWF's motion without a hearing and entered judgment in favor of the FWF. R. 5207–08, 5213. It did not address the Legislative Parties' due-process objections or grant their requests for a hearing on the FWF's motion. In granting the FWF's motion without a hearing, the court violated due process.

6. The Trial Court's Invalidation of Five Appropriations Not Challenged in Any Dispositive Motion Violated Due Process.

The trial court also denied due process when it invalidated five specific appropriations that Plaintiffs did not challenge in their motions. No party presented evidence or argument as to Specific Appropriations 3087, 3088, 3090, 3091, and

3122 in the General Appropriations Act for Fiscal Year 2015–16. The trial court's invalidation of these appropriations without evidence or argument denied the Legislative Parties an opportunity to be heard and violated procedural due process.

A final judgment that "goes beyond . . . the proof adduced" by the parties violates the requirements of due process and denies the party against which judgment is entered its "day in court." *Robinson v. Malik*, 135 So. 2d 445, 445 (Fla. 3d DCA 1961). Here, the Legislative Parties were denied their day in court because the trial court invalidated five appropriations not challenged in Plaintiffs' motions for summary judgment. There was no evidence before the Court as to how those funds were expended, and therefore no evidence to support the conclusion that funds in those appropriations were expended for unconstitutional purposes.

When Plaintiffs included these five appropriations in their proposed final judgment, the Legislative Parties objected. R. 5194, 5205. The trial court did not address the due-process objections, but, without evidence or argument, invalidated the appropriations, which that totaled more than $2.4 million. R. 5214; Ch. 2015-232, at 389–90, 394, Laws of Fla. In declaring unconstitutional five appropriations that were not the subject of any dispositive motion, the court violated due process.

7. The Trial Court's Entry of Final Judgment While the Department of State's Motion for Summary Judgment Was Still Pending Violated Due Process.

Finally, the trial court violated due process when it entered a final judgment

without any prior consideration of the Department of State's motion for summary judgment. This Court has held that the failure to address pretrial motions, including dispositive motions, before entry of a final judgment violates due process. *Jackson v. Leon Cty. Elections Canvassing Bd.*, 204 So. 3d 571, 579 (Fla. 1st DCA 2016).

Here, the Department of State sought summary judgment and asserted broad defenses, such as mootness and the separation of powers, which Plaintiffs' motions did not address. R. 3828–45. Still, the trial court declined a suggestion to hear the Department of State's motion first, R. 5121–22, and then granted final summary judgment on the merits of the constitutional claims with the Department's motion still unresolved. When it failed to consider the defenses raised in the Department of State's motion for summary judgment and proceeded to consider the merits and enter a final judgment, the trial court yet again fundamentally violated due process.

B. The Trial Court's Violations of Due Process Warranted Disqualification.

The trial court's systematic violations of basic fairness and procedural due process—over repeated, unanswered objections—convinced the Legislative Parties that future proceedings before the same trial judge would not be fair or impartial.

In support of their motion to disqualify, the Legislative Parties submitted a joint affidavit of Adam S. Tanenbaum, General Counsel of the Florida House of Representatives, and Dawn K. Roberts, General Counsel of the Florida Senate. R.

5388–95.[11] The affiants testified that they had discussed the facts with the Chiefs of Staff of their respective legislative bodies, and that the Legislative Parties had a well-grounded fear that they would not receive fair and impartial consideration in these cases below before the Honorable Charles W. Dodson. R. 5389 ¶¶ 4, 17–18.

Despite the wave of due-process violations, and despite the undemanding standard applicable to an initial motion for disqualification, *see Biscayne Bay Pilots, Inc. v. Fla. Caribbean-Cruise Ass'n*, 177 So. 3d 1043, 1044 (Fla. 1st DCA 2015) ("If the motion for disqualification alleges sufficient facts to cause a reasonably prudent person to fear that they would not obtain a fair and impartial hearing, the motion should be granted."), the court denied the motion, R. 5965–66.

The motion should have been granted. A motion to disqualify that evinces a well-grounded fear that proceedings before a particular judge will not be fair and impartial is legally sufficient. *Wickham v. State*, 998 So. 2d 593, 596 (Fla. 2008). A trial court must decide only the legal sufficiency of the motion and may not pass on the truth of the facts alleged. *Kline v. JRD Mgmt. Corp.*, 165 So. 3d 812, 814 (Fla. 1st DCA 2015). The motion need not establish actual bias or partiality; facts that

[11] An affidavit of in-house counsel satisfies the party-affidavit requirement of Florida Rule of Judicial Administration 2.330(c)(3). *E.I. du Pont de Nemours & Co. v. 1997 & 1998 Claims of Ecuadorian Shrimp Farmers*, 860 So. 2d 529, 529 (Fla. 4th DCA 2003) (concluding that an affidavit of "in-house counsel" satisfies the disqualification rule); *Owens-Corning Fiberglas Corp. v. Parsons*, 644 So. 2d 340, 341–42 (Fla. 1st DCA 1994) (concluding that an affidavit of Owens-Corning's in-house director of asbestos litigation satisfies the disqualification rule).

would cause a reasonably prudent person to fear bias or partiality are sufficient. *Id*.

The denial of due process is a legally sufficient basis for disqualification. *Bielling v. Bielling*, 188 So. 3d 980, 981 (Fla. 1st DCA 2016). In *Amato v. Winn Dixie Stores/Sedgwick James*, 810 So. 2d 979, 983 (Fla. 1st DCA 2002), the Court found legally sufficient an allegation that a judge decided the merits before the parties rested, and before one party could cross-examine an expert witness. In *Wyckoff v. Cavanaugh*, 164 So. 3d 165 (Fla. 1st DCA 2015), the Court found legally sufficient an allegation that a judge refused to permit one party to cross-examine another at an evidentiary hearing. And in *Jackson v. Leon Cty. Elections Canvassing Bd.*, 214 So. 3d 705, 708 (Fla. 1st DCA 2016), this Court concluded that the trial court's violations of due process would have been legally sufficient if the argument had been preserved. There, the trial court had conducted a final hearing without notice that evidence would be taken, refused to allow discovery, and failed to address pretrial motions before a final order issued. *Jackson v. Leon Cty. Elections Canvassing Bd.*, 204 So. 3d 571, 577–79 (Fla. 1st DCA 2016).[12]

Because due process establishes the minimum benchmark of fundamental

[12] *See also Wade v. Wade*, 123 So. 3d 697, 698 (Fla. 3d DCA 2013) (finding legally sufficient a motion to disqualify that alleged the trial court's refusal to permit the movant to present evidence or cross-examine a witness); *Peterson v. Asklipious*, 833 So. 2d 262, 264 (Fla. 4th DCA 2002) (finding legally sufficient a motion to disqualify that alleged the trial court's refusal to permit the movant to testify); *Zuchel v. State*, 824 So. 2d 1044, 1046 (Fla. 4th DCA 2002) (explaining that a refusal to permit cross-examination indicates an "unwillingness to hear" one side of the case and gives a reasonably prudent person a well-founded fear of bias).

fairness, disqualification is a logical consequence of a due-process violation. Due process is "the most basic of all rights under our legal system." *Holland v. State*, 503 So. 2d 1250, 1252 (Fla. 1987). It "serves as a vehicle to ensure fair treatment through the proper administration of justice where substantive rights are at issue, and requires fair notice and a real opportunity to be heard at a meaningful time and in a meaningful manner." *Crosby v. Fla. Parole Comm'n*, 975 So. 2d 1222, 1223 (Fla. 1st DCA 2008). All parties who appear before Florida's courts are entitled to the fundamental fairness that procedural due process assures. Courts routinely uphold and vindicate the right of state agencies to due process. *See, e.g.*, *Dep't of Children & Families v. W.H.*, 109 So. 3d 1269, 1270 (Fla. 1st DCA 2013); *Dep't of Revenue ex rel. Poynter v. Bunnell*, 51 So. 3d 543, 546 (Fla. 1st DCA 2010).

The trial court committed flagrant and systematic violations of due process. Standing alone, any these violations would cause a well-founded fear of bias or unfairness. Collectively, the accumulation of due-process violations erodes the confidence of any reasonable person in the fairness and impartiality of the trial court. The motion for disqualification was sufficient and should have been granted.

CONCLUSION

For these reasons, this Court should vacate the entry of summary judgment and either remand with instructions to enter final judgment in favor of Defendants or, in the alternative, remand for further proceedings before a different trial judge.

Respectfully submitted,

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I certify that, on December 21, 2018, the foregoing document was furnished by email to the individuals identified on the Service List that follows.

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CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENT

I certify that this brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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