

IN THE SUPREME COURT OF FLORIDA

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

Petitioners,

v.

Case No.: SC19-1935

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

Respondents.

**JURISDICTIONAL BRIEF OF RESPONDENTS
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

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TABLE OF CONTENTS

TABLE OF CONTENTS..... iii

TABLE OF AUTHORITIESiv

STATEMENT OF THE CASE AND OF THE FACTS 1

SUMMARY OF ARGUMENT3

ARGUMENT ON JURISDICTION.....4

THE COURT SHOULD DECLINE TO EXERCISE ITS
DISCRETION TO REVISE THE DECISION BELOW.4

CONCLUSION 7

CERTIFICATE OF SERVICE8

TABLE OF AUTHORITIES

Cases

Dickinson v. Stone, 251 So. 2d 268 (Fla. 1971).....5

Oliva v. Fla. Wildlife Fed’n, No. 1D18-314 (Fla. 1st DCA September 9, 2019)..1, 2

R.J. Reynolds Tobacco Co. v. Grossman,
250 So. d 91 (Fla. 4th DCA 2018).....5

Florida Constitution

Article V § 3(b)(3)4, 5

Article X § 28.....1

STATEMENT OF THE CASE AND OF THE FACTS

In 2014, Florida voters approved an amendment which added article X, section 28 to the Florida Constitution (the Amendment), related to the Land Acquisition Trust Fund (LATF). *See Oliva v. Fla. Wildlife Fed 'n*, No. 1D18-3141, slip op. at 2 (Fla. 1st DCA September 9, 2019) (Slip op.). Petitioners filed an action to challenge appropriations from the LATF and the trial court ruled in their favor upon a motion for summary judgment, declaring approximately 100 appropriations unconstitutional. Slip op. at 7. Most significantly, the trial court held that the Amendment generally limited LATF appropriations to the acquisition of conservation lands and property interests that the State did not own on the effective date of the Amendment. The trial court also concluded that when the Florida Legislature used LATF funds for improvement, management, restoration, and enhancement, those activities could only be used for the benefit of those newly purchased lands. *Id.*

The First District Court of Appeal quoted from the trial court's oral pronouncement on the issue, which referred to the ballot title and summary, the Florida Supreme Court's advisory opinion on the ballot title and summary, and "all that goes with that." Slip op. at 5. As the First District reasoned, the trial court erred in its interpretation of the text of the Amendment itself, in several respects. First, the Amendment does not restrict the use of LATF funds with respect to the

cutoff date announced by the trial court. Slip op. at 9. The Amendment does not limit improvement to properties recently acquired; acquisition and improvement are coequal activities under the text of the Amendment. Slip op. at 9. The trial court also misread the phrase “together with management, restoration of natural systems, and the enhancement of public access or recreational enjoyment of conservation lands.” The phrase does not, as the trial court reasoned, modify all preceding language in the Amendment. Slip op. at 9-10]. The First District reversed the final judgment because the trial court had made an “unsupportable reading” of the Amendment, and the First District remanded for further proceedings to address the challenged appropriations. Slip op. at 11. Petitioners filed a timely notice to invoke this Court’s jurisdiction.

SUMMARY OF ARGUMENT

The First District Court of Appeal expressly construed a provision of the Florida Constitution, and the Court has discretion to review the opinion. However, the Court should decline to do so because Petitioners cannot show a ripe and substantial issue regarding the interpretation of the Florida Constitution. In order to preserve judicial resources, the Court should defer any review until the lower court has had the opportunity to enter a more comprehensive analysis of the claims raised by the Petitioners.

ARGUMENT ON JURISDICTION

THE COURT SHOULD DECLINE TO EXERCISE ITS DISCRETION TO REVISE THE DECISION BELOW

The First District has expressly construed a provision of the Florida Constitution, and thus this Court has discretionary jurisdiction to review the opinion. Fla. Const. Art. V § 3(b)(3). In the interests of judicial economy, the Court should decline to exercise jurisdiction and allow the circuit court to conduct a full trial and consider the issues presented on remand from the First District. Respondents submit that the Court should preserve its resources to resolve any disputes that may remain after judgment on remand and the outcome of any subsequent appeal of that judgment on remand.

The Amendment creates a dedicated revenue stream for the LATF and limits appropriations from the fund. As Petitioners represent in their brief, the Amendment lists a series of things that the Legislature is authorized to pay for when using LATF funds. [Petitioners' jurisdictional brief at 8]. Yet, Petitioners then represent that LATF is a funding source "for what many people thought to be a specific and limited purpose," that there is a great need to acquire conservation lands and recreation lands, and that funds within the LATF are dwindling. Other than a reference to the title of the Amendment and other extrinsic evidence, Petitioners suggest nothing that would refute the First District's observation that the final judgment was based on an "unsupportable reading."

To summarize, the First District simply rejected the trial court's reference to extrinsic evidence and held that the Amendment must be interpreted based upon its plain language. The Petitioners argue that the Court should accept jurisdiction, not because of any substantial argument that the First District misread the text of the Amendment, but because a reversal of that opinion would promote their policy preferences. If this Court is to accept jurisdiction under article V, section 3(b)(3) of the Florida Constitution, it should do so given a ripe and substantial question of constitutional interpretation. Petitioners do not present a substantial question of constitutional interpretation.

Nor do Petitioners present a ripe issue, as the trial court has not had the opportunity to weigh in on the nature and purpose of more specific terms within the Amendment and whether those terms authorize specific, challenged appropriations. The Court should follow the "general rule that the constitutionality of a statute be considered first by the trial court." *R.J. Reynolds Tobacco Co. v. Grossman*, 250 So. 3d 91, 94 (Fla. 4th DCA 2018), citing *Dickinson v. Stone*, 251 So. 2d 268, 271 (Fla. 1971). The Court should defer jurisdiction until a party raises a substantial dispute about the constitutionality of specific appropriations.

The First District did not direct the lower court to dismiss any of the complaints in the circuit court. The lower court is required to apply the First District's opinion as the law of the case. However, the trial court has not begun to

address the concrete issues raised by the pleadings and whether certain appropriations are authorized by the text of the Amendment. The trial court first should determine, consistent with the law of the case, whether any specific appropriation is not within the series of things that the Amendment authorizes. A final judgment on remand would provide the parties the opportunity to appeal any remaining issues within the law of the case and, ultimately, again ask this Court to invoke its discretionary jurisdiction. The Court would conserve judicial resources by allowing the lower courts to resolve all of the remaining issues in this case and then, only following appeal on remand, determine whether there are any remaining issues it should consider.

CONCLUSION

For the foregoing reasons, Respondents respectfully submit that this Court should decline to exercise its jurisdiction.

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I HEREBY certify that a true and correct copy of the foregoing has been furnished via electronic mail to the below on this 23rd day of December 2019.

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