No. SC19-1935

In the Supreme Court of Florida

FLORIDA DEFENDERS OF THE ENVIRONMENT, INC., ET AL.,

Petitioners,

v.

JOSE OLIVA, ETC., ET AL.,

Respondents.

JURISDICTIONAL BRIEF OF THE FLORIDA LEGISLATURE, THE PRESIDENT OF THE FLORIDA SENATE, AND THE SPEAKER OF THE FLORIDA HOUSE OF REPRESENTATIVES

On Review From the First District Court of Appeal

George N. Meros, Jr.
HOLLAND & KNIGHT LLP
315 South Calhoun Street, Suite 600
Tallahassee, Florida 32301
george.meros@hklaw.com

Jeremiah Hawkes
Ashley Urban
FLORIDA SENATE
302 The Capitol
404 South Monroe Street
Tallahassee, Florida 32399-1100
hawkes.jeremiah@flsenate.gov
urban.ashley@flsenate.gov

Andy Bardos
James Timothy Moore, Jr.
GRAYROBINSON, P.A.
Post Office Box 11189
Tallahassee, Florida 32302
andy.bardos@gray-robinson.com
tim.moore@gray-robinson.com

Daniel Bell
FLORIDA HOUSE OF REPRESENTATIVES
418 The Capitol
402 South Monroe Street
Tallahassee, Florida 32399-1300
daniel.bell@myfloridahouse.gov

TABLE OF CONTENTS

INTRODUCTION 1

STATEMENT OF THE CASE AND FACTS 2

SUMMARY OF THE ARGUMENT 4

ARGUMENT 5

CONCLUSION 8

TABLE OF CITATIONS

Cases

Ansin v. Thurston,

101 So. 2d 808 (Fla. 1958) 7

Ervin v. Collins,

85 So. 2d 852 (Fla. 1956) 6

Florida Greyhound Owners & Breeders Association, Inc. v. West Flagler Associates, Ltd.,

347 So. 2d 408 (Fla. 1977) 7

Jenkins v. State,

385 So. 2d 1356 (Fla. 1980) 7

Lawnwood Medical Center, Inc. v. Seeger,

990 So. 2d 503, 510 (Fla. 2008) 6

Constitutional Provisions

Art. X, § 28, Fla. Const. .....passim

Art. X, § 28(a), Fla. Const. 2

Art. X, § 28(b), Fla. Const. 2

Art. X, § 28(b)(1), Fla. Const.....7

Art. X, § 12(h), Fla. Const. 3, 5

INTRODUCTION

This Court should decline to exercise its jurisdiction to review the First DCA's limited and correct decision.

Article X, section 28 specifies the conservation purposes for which funds in the LATF may be expended.[1] Those purposes include land acquisition, but they also include certain non-acquisition activities, such as improvement, management, and the restoration of natural systems.

The trial court construed article X, section 28 to permit these non-acquisition activities *only* on land owned by the State and acquired since article X, section 28 took effect on July 1, 2015. It applied this unwritten limitation and, in one stroke, entered summary judgment and invalidated 185 legislative appropriations of more than $420 million.

On appeal, the First DCA addressed only the narrow question of interpretation that underlay the trial court's ruling. It found no textual support for an ownership-and-acquisition-date limitation and remanded for further proceedings to determine the constitutionality of the challenged appropriations without regard to that textually unsupported limitation.

[1] "LATF" refers to the Land Acquisition Trust Fund. "FDE" refers to Florida Defenders of the Environment, Inc., and the other plaintiffs who initiated Case No. 2015-CA-002682. "FWF" refers to Florida Wildlife Federation, Inc., and the other plaintiffs who initiated Case No. 2015-CA-001423.

The unanimous panel decision was narrow and plainly correct. The limitation sought by the FDE has no footing in the constitutional text—no matter what the FDE thinks "many people thought." Br. at 9. The FDE cites no constitutional provision that supports its interpretation.

The First DCA correctly and unanimously resolved one narrow question. It was not a close call. This case should return to the trial court for a final determination of the constitutionality of the challenged appropriations.

STATEMENT OF THE CASE AND FACTS

In 2014, Florida voters added article X, section 28 to the Florida Constitution. Subsection (a) of article X, section 28 dedicates funds to be deposited into the LATF, while subsection (b) broadly enumerates the purposes for which funds in the LATF may be expended.

This proceeding consists of two consolidated cases—one filed by the FWF and the other by the FDE. The FDE alleged that certain appropriations were made for purposes that article X, section 28 does not authorize, and it moved for summary judgment. Slip op. at 4.

The trial court granted the FDE's motion. It construed article X, section 28 to permit LATF expenditures for non-acquisition activities *only* on "conservation lands purchased after the effective date of the amendment." *Id*. at 3–4. 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." *Id*. at 7. In reliance on this limitation, the trial court invalidated the challenged appropriations and entered summary judgment. *Id*. at 3–7.

The First DCA found the trial court's interpretation "unsupportable." Slip. Op. at 11. It explained that constitutional interpretation begins with the plain text of the Constitution, and that voter intent is discerned in the text's plain meaning. *Id*. at 8–9. Finding no textual support for the trial court's interpretation, the First DCA held that expenditures from the LATF are "not restricted to use on land purchased by the State after 2015." *Id*. at 11. It reversed the entry of summary judgment and remanded to the trial court to reassess the constitutionality of the challenged appropriations. *Id*.

SUMMARY OF THE ARGUMENT

The narrow question decided by the court below requires no further review. Nothing in the text supports the FDE's contention that restoration, management, and other non-acquisition activities authorized by article X, section 28 are limited to land owned by the State and acquired since July 1, 2015. The resources of the parties and of the Court need not be exhausted on further review of a contention that is scarcely colorable.

The FDE relies on the title of article X, section 28—"Land Acquisition Trust Fund"—but section titles may not be considered in constitutional interpretation. Art. X, § 12(h), Fla. Const. Nor does the title illuminate the interpretive question decided

below. The FDE's vague reference to voter "intent" is also flawed; the FDE presents no evidence of voter intent and forgets that the constitutional text *is* the authoritative expression of voter intent.

The FDE claims that this is the Court's last chance to render a comprehensive interpretation of article X, section 28. Its exhortation is misguided. The question below was narrow and did not require an omnibus interpretation, and the companion case brought by the FWF will resume on remand and likely conclude with another appeal. More fundamentally, this Court does not seize opportunities to comment on narrow, open-and-shut constitutional questions. In almost all cases, the decisions of district courts are final. The First DCA's decision should be final here.

ARGUMENT

The First DCA expressly construed article X, section 28, but its decision does not warrant further review. The court passed on a narrow question—whether article X, section 28 limits restoration, management, and other non-acquisition activities to land owned by the State and acquired since July 1, 2015—and answered that narrow question with no difficulty. A second stage of appellate review would only exhaust public resources unnecessarily.

The First DCA correctly concluded that the text of article X, section 28 does not restrict restoration, management, and other authorized non-acquisition activities to land owned by the State and acquired since July 1, 2015. The constitutional text

itself prescribes the limits on expenditures of dedicated funds, and the trial court's addition of an unwritten limitation was error.

Of course, the drafters of article X, section 28 could easily have limited non-acquisition activities to state lands acquired after a certain date. But they did not, and voters adopted a proposal that promised to set funds aside for critical restoration and management purposes, such as restoration of springs, beaches, and the Everglades. It was reasonable for the drafters and the voters to treat restoration, management, and other non-acquisition activities as important ends in themselves, and not as mere ancillaries of new land acquisitions.

The FDE offers no persuasive reason for further appellate review. It cites no textual support for the trial court's unwritten limitation. Its chief argument is that the court below did not accord weight to article X, section 28's title, "Land Acquisition Trust Fund." Br. at 5, 7, 8. But the Constitution expressly prohibits consideration of section titles in constitutional interpretation. Art. X, § 12(h), Fla. Const. ("Titles and subtitles shall not be used in construction."). Nor does article X, section 28's title speak to the question on appeal: whether the non-acquisition activities that article X, section 28 authorizes are limited to land owned by the State and acquired since July 1, 2015. The title, which only reiterates the name of the trust fund, does not answer that question.

The FDE also cites voter intent, insisting that a textual interpretation "defeats the intent" of the voters and disregards what "many people thought." Br. at 1, 9. In the interpretation of constitutional provisions, however, courts follow the text, and do not lean on speculation about the subjective intent of millions of different voters. *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))); slip. op. at 9 ("Voter intent is discerned through the plain meaning of the text."). The FDE's vague invocations of voter intent do not warrant further review.

The FDE invites the Court to render a comprehensive interpretation of article X, section 28 in all of its facets. *See, e.g.*, Br. at 1 ("[T]his Court must determine the constitutional limits the people's adoption of this provision places upon the power of the Legislature to expend monies placed into the Land Acquisition Trust Fund by Article X §28."). The legal basis of the trial court's judgment was narrow, however, and the FDE has identified no other theory that would support affirmance of the trial court's judgment. An omnibus interpretation of the entire constitutional provision would therefore amount to an advisory opinion.

No more persuasive is the FDE's assertion that this is the Court's last chance to interpret article X, section 28. Br. at 1, 9. This assertion ignores the still-pending

companion case that is now poised to proceed to a final determination and perhaps another appeal. The FDE's assumption, moreover, that this Court must seize every opportunity to comment on constitutional questions is mistaken. The Constitution envisions Florida's district courts of appeal as "courts primarily of final appellate jurisdiction," the determinations of which are in most instances "final and absolute," *Jenkins v. State*, 385 So. 2d 1356, 1358 (Fla. 1980) (quoting *Ansin v. Thurston*, 101 So. 2d 808, 810 (Fla. 1958)))—not as "inconvenient rungs on the appellate ladder," *Fla. Greyhound Owners & Breeders Ass'n, Inc. v. West Flagler Assocs., Ltd.*, 347 So. 2d 408, 411 (Fla. 1977) (England, J., concurring). The district courts often decide important questions of constitutional law without further review.

Finally, the FDE argues that the decision below "places no restrictions on the State's power to expend LATF funds virtually as it pleases." Br. at 7. The FDE is mistaken. The constitutional text itself prescribes the limitations applicable to each of the authorized purposes. For example, the textual limitation on "restoration" is that restoration efforts be directed to "natural systems"—not that restoration take place on land owned by the State and acquired since July 1, 2015. Art. X, § 28(b)(1), Fla. Const. The First DCA appropriately refused to add unwritten limitations to the limitations set forth in the text of article X, section 28. Its decision does not call for review.

CONCLUSION

This Court should decline to exercise jurisdiction. A unanimous panel of the First DCA correctly rejected the unwritten limitation on which the trial court relied to invalidate 185 appropriations. This case should return to the trial court for a final determination of the FWF's constitutional challenges.

/s/ Andy Bardos

George N. Meros, Jr. (FBN 263321)
HOLLAND & KNIGHT LLP
315 South Calhoun Street, Suite 600
Tallahassee, Florida 32301
Telephone: 850-425-5622
george.meros@hklaw.com
Attorneys for Respondents, the Florida Legislature, Senate President Bill Galvano, and Speaker Jose Oliva

Andy Bardos (FBN 822671)
James Timothy Moore, Jr. (FBN 70023)
GRAYROBINSON, P.A.
Post Office Box 11189
Tallahassee, Florida 32302
Telephone: 850-577-9090
andy.bardos@gray-robinson.com
tim.moore@gray-robinson.com
vanessa.reichel@gray-robinson.com
Attorneys for Respondents, the Florida Legislature, Senate President Bill Galvano, and Speaker Jose Oliva

Jeremiah Hawkes (FBN 472270)
General Counsel
Ashley Urban (FBN 105253)
Deputy General Counsel
FLORIDA SENATE
302 The Capitol
404 South Monroe Street
Tallahassee, Florida 32399-1100
Telephone: 850-487-5237
hawkes.jeremiah@flsenate.gov
urban.ashley@flsenate.gov
Attorneys for Respondent, Senate President Bill Galvano

Daniel Bell (FBN 1008587)
General Counsel
FLORIDA HOUSE OF REPRESENTATIVES
418 The Capitol
402 South Monroe Street
Tallahassee, Florida 32399-1300
Telephone: 850-717-5500
daniel.bell@myfloridahouse.gov
Attorneys for Respondent, Speaker Jose Oliva

CERTIFICATE OF SERVICE

I certify that, on December 23, 2019, this brief was served by email on the individuals identified on the Service List that follows.

/s/ Andy Bardos
Andy Bardos (FBN 822671)
GRAYROBINSON, P.A.

SERVICE LIST

Harold G. Vielhauer
Anthony Pinzino
FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION
The Bryant Building
620 South Meridian Street
Tallahassee, Florida 32399-1600
bud.vielhauer@myfwc.com
anthony.pinzino@myfwc.com
Attorneys for Respondents, Fish and Wildlife Conservation Commission and Executive Director of the Fish and Wildlife Commission

Robert A. Williams
Jeffrey Brown
DEPARTMENT OF ENVIRONMENTAL PROTECTION
3900 Commonwealth Blvd., M.S. 35
Tallahassee, Florida 32399-3000
jeffrey.brown@dep.state.fl.us
syndie.l.kinsey@dep.state.fl.us
Attorneys for Respondents, Secretary of Environmental Protection and Department of Environmental Protection

Bradley R. McVay
Ashley E. Davis
Carlos A. Rey
FLORIDA DEPARTMENT OF STATE
R.A. Gray Building, Suite 100
500 South Bronough Street
Tallahassee, Florida 32399-0250
carlos.rey@dos.myflorida.com
Attorneys for Respondents, Secretary of State and Department of State

Steven L. Hall
Joan Towles Matthews
Allan J. Charles
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
The Mayo Building
407 South Calhoun Street, Suite 520
Tallahassee, Florida 32399-0800
steven.hall@freshfromflorida.com
joan.matthews@freshfromflorida.com
allan.charles@freshfromflorida.com
Attorneys for Respondents, Commissioner of Agriculture and Department of Agriculture

Joseph W. Little
3731 NW 13th Place
Gainesville, Florida 32605
littlegnv@gmail.com
Attorneys for Petitioners, Florida Defenders of the Environment, Inc.; *Stephen J. Robitaille*; *Joseph W. Little*; *James P. Clugston*; *Lola Haskins*; *Stephen M. Holland*; *and W. Thomas Hawkins*

David G. Guest
525 West 8th Avenue
Tallahassee, Florida 32303
david@davidguestlaw.net
Attorneys for Florida Wildlife Federation, Inc.; *St. Johns Riverkeeper, Inc.*; *Environmental Confederation of Southwest Florida, Inc.*; *The Sierra Club, Inc.*; *and Manley Fuller*

Kenneth B. Wright
1301 Riverplace Boulevard, Suite 1818
Jacksonville, Florida 32207
ken@jacobsonwright.com
vickie@jacobsonwright.com
Attorneys for Florida Wildlife Federation, Inc.; *St. Johns Riverkeeper, Inc.*; *Environmental Confederation of Southwest Florida, Inc.*; *The Sierra Club, Inc.*; *and Manley Fuller*

Alisa Coe
Bradley Marshall
EARTHJUSTICE
111 South Martin Luther King Jr. Boulevard
Tallahassee, Florida 32301
acoe@earthjustice.org
bmarshall@earthjustice.org
kstandridge@earthjustice.org
slewis@earthjustice.org
ruhland@earthjustice.org
Attorneys for Florida Wildlife Federation, Inc.; *St. Johns Riverkeeper, Inc.*; *Environmental Confederation of Southwest Florida, Inc.*; *The Sierra Club, Inc.*; *and Manley Fuller*

Robert T. Benton, II
P.O. Box 126020
Tallahassee, Florida 32302-0412
bob@bentonlex.com
Attorneys for Florida Wildlife Federation, Inc.; *St. Johns Riverkeeper, Inc.*; *Environmental Confederation of Southwest Florida, Inc.*; *The Sierra Club, Inc.*; *and Manley Fuller*

CERTIFICATE OF COMPLIANCE

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

/s/ Andy Bardos
Andy Bardos (FBN 822671)
GrayRobinson, P.A.