Filing # 13863690 Electronically Filed 05/20/2014 11:31:48 AM

RECEIVED, 5/20/2014 11:33:45, John A. Tomasino, Clerk, Supreme Court

IN THE SUPREME COURT OF FLORIDA

JAMES APTHORP,

Petitioner,

v. Case No. SC14-924

KEN DETZNER, as Secretary of
State of Florida,

Respondent.
_____/

BRIEF OF AMICUS CURIAE
THE LEAGUE OF WOMEN VOTERS OF FLORIDA
IN SUPPORT OF THE PETITIONER

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IDENTITY OF AMICUS AND INTEREST IN THE CASE

The League of Women Voters (the "LWV") was founded in 1920 as an outgrowth of the struggle to win voting rights for women. The LWV is comprised of nonpartisan, community based organizations that encourages Americans to participate actively in government and the electoral process. The LWV is a grassroots organization, working at the national, state and local levels with Leagues in all 50 states, the District of Columbia, Puerto Rico, the Virgin Islands and Hong Kong, in addition to the hundreds of local Leagues nationwide. The LWV currently has over 150,000 members and supporters, and has worked for over 90 years to ensure that citizens do not face unnecessary barriers when registering to vote and to casting ballots.

The League of Women Voters of Florida (the "League") is the Florida affiliate of the LWV. It began in 1939 and now has over 20,000 members, supporters, and volunteers operating out of 30 chapters across the state. The League holds candidate forums, issues Voter Guides to help inform citizens on local races and ballot amendments, and sponsors public forums to encourage Florida's citizens and elected officials to broaden their understanding of key issues, while promoting engaged citizenship through an informed and active participation in government.

The League has a particular interest in this matter because it involves the interpretation of the Sunshine Amendment. The League worked to collect signatures in order to place the Sunshine Amendment on the ballot, and worked extensively to educate Florida's citizens on the need for the Amendment as well as its substance and purpose. The League was committed then as it is now to ensuring that the constitutionally mandated financial disclosures further the goal of financial transparency so that Florida voters can make informed decisions.

SUMMARY OF THE ARGUMENT

In response to the political scandals that rocked Florida during the 1970's involving conflicts of interest, the League worked to have the Sunshine Amendment placed on the ballot in 1976, and to educate voters as to its meaning and purpose. The Amendment passed with overwhelming public support, and mandated in part that "all elected constitutional officers and candidates for such offices . . . *shall file full and public disclosure of their financial interests*." Art. II, § 8(a), Fla. Const. (emphasis added).

Section 112.31425, which allows officers and candidates to shield assets from disclosure through blind trusts, is contrary to the plain language of the Sunshine Amendment. Further, it is contrary to the legitimate concerns that led to passage of the Amendment, as well as its purpose. This Court should declare the statute unconstitutional and grant the relief sought in the Emergency Petition.

ARGUMENT

THE CONSTITUTION DEMANDS FULL AND PUBLIC FINANCIAL DISCLOSURE BY CONSTITUTIONAL OFFICERS AND CANDIDATES FOR THOSE OFFICES.

The Emergency Petition does a thorough job of explaining the circumstances surrounding how the Sunshine Amendment came to be part of the Florida Constitution. Emergency Petition, at 3-7. "Florida entered the 1970's with a relatively weak statute forbidding public officials from acting in conflict of interest." *Plante v. Gonzalez*, 575 F.2d 1119, 1122 (5th Cir. 1978). Perhaps as a consequence of the lack of meaningful legislative guidelines, "[p]olitical scandals rocked Florida in the seventies." *Id.* Additional laws addressing conflicts of interest were passed, including the first law that required certain officials to file statements concerning their financial interests. *Id.* However, even the more stringent legislation "did not satisfy the public's appetite for stricter controls on conflicts of interest." *Id.*

In order to sate that appetite, the people of the state of Florida, "under the leadership of Governor Reubin O'D. Askew," proposed that the Florida Constitution be amended to include what was known as the Sunshine Amendment. *Williams v. Smith*, 360 So. 2d 417, 418-19 (Fla. 1978). As noted above, the League was extensively involved in the effort to put the Sunshine Amendment on the ballot, and to educate the voters on its meaning and intent concerning the goal

of financial transparency. The Amendment passed overwhelmingly by a vote of 1,765,626 to 461,940, and it became law. *Plante v. Gonzalez*, 575 F.2d at 1122; Art. II, § 8, Fla. Const.

"In construing the Constitution, we first seek to ascertain the intent of the framers *and voters*, and to interpret the provision before us in a way that will best fulfill that intent." *Williams v. Smith*, 360 So. 2d 417, 418-19 (Fla. 1978) (citing *Gray v. Bryant*, 125 So. 2d 846, 852 (Fla. 1960)) (emphasis added). "We may glean light for discerning the people's intent from historical precedent, from the present facts, from common sense, and from an examination of the purpose the provision was intended to accomplish and the evils sought to be prevented." *Plante v. Smathers*, 372 So. 2d 933, 936 (Fla. 1979).

This Court has noted the clear historical purpose behind the Sunshine Amendment was to impose stricter standards of disclosure on public officials as a means to deter conflicts of interest. *Id.* at 936-37. The public (and the League) undertook the effort to amend the Florida Constitution in order to achieve this objective because conflicts of interest raised "legitimate concerns" among Florida's citizens. *Id.* at 937. Specifically, those concerns were: 1) the public's right to know an official's interest; 2) deterrence of corruption; 3) creation of public confidence in elected officials; and 4) "assistance in detecting and

prosecuting officials who violate the law." *Id.* at 937 (citing *Plante v. Gonzalez*, 575 F.2d 1119 (11th Cir. 1978)).

Though the scandals that "rocked" Florida in the 1970's are past, issues concerning improper conflicts of interest continue to arise and the concerns that led to the Sunshine Amendment are no less valid today. As argued in the Emergency Petition, the constitutional language is clear and unambiguous – "full" and "public" do not mean "blind" and "concealed." Emergency Petition, at 14-15. Allowing public officials to shield their assets from public view under Section 112.31425 is plainly contradictory to the constitutional language, as well as the intent behind the Sunshine Amendment to ensure financial transparency.[1] Section 112.31425 subverts the exact "legitimate concerns" that led to the adoption of the Sunshine Amendment. Specifically:

- **The public's right to know an official's interest.** As has been noted, "[i]t is relevant to the voters to know what financial interests the candidates have." *Plante v. Gonzalez*, 575 F.2d at 1135. Placing assets into a blind trust does not lessen the relevance of this information, and subverts the right to know through adequate financial disclosure.

[1]The League was generally supportive of the ethics reform as set forth in SB 2, which led to the enactment of Section 112.31425. However, the League never supported the "blind trust" provisions, and specifically criticized the provisions as a "bad thing." See the League's Capitol Reports of March 15, 2013 and April 12, 2013.http://thefloridavoter.org/files/download/617;http://www.thefloridavoter.org/files/download/653.

- **Deterrence of corruption.** As was noted when the Sunshine Amendment passed, "the existence of a reporting requirement will discourage corruption." *Id.* Without full and public disclosure, the possibility of corruption is increased, though admittedly in a different form of corruption than was present in the 1970's. Hypothetically, an unscrupulous politician and an unscrupulous trustee could use the statute to hide from public view evidence of conflict of interest that the Sunshine Amendment sought to eliminate. The public would have no way of knowing if the politician and the trustee were following the statutory dictates, or if they were not. When such an impenetrable shield from public view is put in place, the possibility of corruption is greatly increased.

- **Creation of public confidence in elected officials.** As noted, "cynicism about public officials is not a new, and easily reversed, phenomenon. Disclosure may not completely remove this doubt. It should help, however." *Plante v. Gonzalez*, 575 F.2d at 1135. By severely limiting disclosure, Section 112.31425 subverts this concept and can only increase public cynicism. Governor Askew noted that the Sunshine Amendment was "the single greatest step, and perhaps the most positive step, we can take to restore the confidence of the people." Emergency Petition, at 18. Section 112.31425 is a step backwards concerning public confidence in elected officials.

- **Assistance in detecting and prosecuting officials who violate the law.** The shield created by Section 112.31425 (which contains no penalties for violations of the statute) raises the possibility that unscrupulous individuals could subvert the statute by engaging in communications concerning the assets of the blind trust. If such communications occurred (for example verbally, with no witnesses present), how would this misconduct be detected?

> Allowing the statutory structure to remain in place severely hinders detection of wrongdoing.

The language and purpose of the Sunshine Amendment require that the statute be invalidated. The League worked with many other groups and individuals to have the Sunshine Amendment placed on the ballot, and the citizens overwhelmingly voted to make it law and add a heightened level of financial transparency to those who serve in elected office. It has been a proud and important part of the Florida Constitution for nearly 40 years, and its provisions "must never be construed in such manner as to make it possible for the will of the people to be frustrated or denied." *Florida Hosp. Waterman, Inc. v. Buster*, 984 So. 2d 478, 486 (Fla. 2008) (quoting *Gray v. Bryant*, 125 So. 2d 846, 852 (Fla. 1960)). Legislation may not "nullify the will of the people expressed in their constitution, the most sacrosanct of all expressions of the people." *Id.* Allowing candidates and politicians to avoid full and public disclosure of their financial interests nullifies the will of the people as set forth in the Sunshine Amendment.

CONCLUSION

For the reasons set forth herein, the League of Women Voters of Florida respectfully requests this Court grant the relief requested in the Emergency Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that on May 20, 2014, the foregoing was e-filed pursuant to Florida Rule of Judicial Administration 2.525 and that the foregoing was served by email in compliance with Florida Rule of Judicial Administration 2.516(b)(1)(A) to: Talbot D'Alemberte and Patsy Palmer, D'Alemberte and Palmer, PLLC, Post

office Box 10029, Tallahassee, Florida 32302-2029, and to dalemberte@dalembertandpalmer.com and palmer@dalembertandpalmer.com; and to Florida Attorney General Pam Bondi, at oag.civil.eserve@myfloridalegal.com; and to Ashley Davis, Assistant General Counsel, at Ashley.davis@dos.myflorida.com.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Brief conforms to the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2) in that it was computer generated utilizing Times New Roman 14 point type.

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