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IN THE SUPREME COURT OF FLORIDA

JAMES APTHORP,

Petitioner,

vs. Case No.: SC 14-____

KEN DETZNER, as Secretary of State of Florida,

Respondent.

EMERGENCY PETITION INVOKING ORIGINAL JURISDICTION OF THE SUPREME COURT FOR A WRIT OF MANDAMUS TO REQUIRE COMPLIANCE WITH THE CONSTITUTIONAL DIRECTIVE FOR FULL AND PUBLIC FINANCIAL DISCLOSURE

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_____ , *Governor's Address*, Journal of the House of Representatives 7 (April 6, 1976)……... 18

Associated Press, *Askew Sunshine Petitions Put Proposed Law on Ballot*, Ocala Star Banner 4A (July 30, 1976) …….…….. 19

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INTRODUCTION

Pursuant to Rule 9.100 of the Florida Rules of Appellate Procedure, James Apthorp ("Petitioner") respectfully petitions this Court for an extraordinary writ compelling the Secretary of State ("Secretary") to enforce the requirement that constitutional officers and candidates for such offices provide full and public financial disclosure in compliance with Article II, Section 8(a), Constitution of Florida ("Sunshine Amendment").

BASIS FOR INVOKING THE JURISDICTION OF THE COURT

This Court has jurisdiction to issue a writ of mandamus under Article V, Section 3(b)(8) of the Florida Constitution. Mandamus is the proper remedy because: (1) the Florida Constitution requires that constitutional officers and candidates for such offices must file full and public financial disclosure (Art. II, § 8(a). Fla. Const.) and (2) it is the ministerial duty of the Secretary to supervise filings of qualification papers, including financial disclosure, by candidates for election to public office §§§ 15.13, 99.061(1), and 99.061(5), Fla. Stat.

The Petitioner further submits that Section 112.31425, Florida Statutes, which allows so-called "qualified blind trusts" to be filed in lieu of full and public financial disclosure, is unconstitutional because it deprives the citizens of Florida of their constitutional right under the Sunshine Amendment to receive the benefits

of full and public disclosure by constitutional officers and candidates for such offices.

Emergency action by this Court is appropriate to avoid numerous potential constitutional dilemmas. The qualifying period begins on June 16, 2014, for candidates filing to run for offices in which full and public financial disclosure is constitutionally required for both candidates and officeholders.[1] This will be the first general election since the challenged statute was enacted in 2013, which means many candidates may believe erroneously that filing a blind trust will satisfy the constitutional mandate. The Court can avoid this confusion by resolving the issue before qualifying begins, so candidates understand that only full and public disclosure is acceptable. No other court can handle the issue in a timely manner.

STATEMENT OF THE FACTS

Petitioner: James Apthorp is a citizen and taxpayer of Florida and has standing to petition for an extraordinary writ to enforce provisions of the Florida Constitution. *Chiles v. Phelps*, 714 So. 2d 453, 456 (Fla. 1998). As chief of staff

[1] Affected constitutional offices in 2014 include: Governor and Lieutenant Governor, all three Cabinet posts, half the forty state Senate seats, and all 120 Florida House seats. The official qualifying period for those positions runs from June 16 to June 20, 2014, but qualifying papers may be accepted as early as June 2, 2014, pursuant to § 99.061(8), Fla. Stat. See *2014 Qualifying Information*, Division of Elections website, available at http://election.dos.state.fl.us/candidate/Qualifying-info.shtml.

to former Florida Governor Reubin Askew for seven years, Apthorp also helped draft the Sunshine Amendment and directed the effort that led to its passage.[2]

Respondent: Ken Detzner is the Florida Secretary of State. The statutory powers and duties of the Secretary include supervision of elections and supervision of filings of qualification papers, including financial disclosure statements, by candidates for election to public office. §§§ 15.13, 99.061(1), and 99.061(5), Fla. Stat.

Government Corruption in the 1970s: The years before adoption of the Sunshine Amendment were a time of widespread and widely publicized government corruption, much of it related to improper financial dealings by public officials. Federal scandals included Watergate, the resignation of Vice President Spiro Agnew, the reprimand of Florida Congressman Bob Sikes, and the ethical difficulties of Florida U.S. Senator Ed Gurney.[3] Florida state government also was rocked by scandal: Three Florida Cabinet members, at least three Supreme Court

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[2] Martin Dyckman, *Reubin O'D. Askew and the Golden Age of Fla. Politics* 218 (Univ. Press of Fla. 2011).

[3] *Plante v. Gonzalez*, 575 F. 2d 1119, 1122 n. 3 (Former 5th Cir. 1978); James N. Naughton, *Agnew Quits Vice Presidency and Admits Tax Evasion in '67….*, N.Y. Times at A1 (Oct. 11, 1973).

justices, at least one state legislator, and even Askew's lieutenant governor were exposed for their ethical lapses[4] – some resulting in prison terms.

The Campaign for Reform: In response to the scandals, Askew pushed for ethics reforms, including financial disclosure, after he took office in 1971. Lawmakers enacted limited disclosure, but rebuffed Askew's push for stronger laws. Dyckman, 176-80. In November 1975, he began a campaign to put full and public disclosure into the Florida Constitution;[5] the drive was Florida's first successful constitutional initiative. Dyckman, 215-223.

Askew stumped for eight months to get the more than 200,000 voter signatures necessary to place the amendment on the November 1976 ballot –

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[4] The Cabinet members were: Commissioner of Education Floyd Christian (false testimony, accepting money for state contracts); Treasurer and Insurance Commissioner Tom O'Malley (extortion, mail fraud); Comptroller F. O. "Bud" Dickinson (plea bargain for a misdemeanor). Dyckman, 164, 166-71, 192-4, 212, 213, 216. Supreme Court Justices Hal Dekle, Joe Boyd, and David McCain were subject to impeachment inquiry; Dekle resigned, as did McCain, but only after articles of impeachment had been voted against him. Justice Vassar Carlton resigned after a gambling junket was exposed. *Id.*, 164, 172-75, 177, 203-04. State Senator George Hollahan was indicted on bribery charges. Lieutenant Governor Tom Adams resigned after it was disclosed that he had improperly used state employees for work on his farm. *Id.*, 152-55, 158-60, 168-70.

[5] "Askew's commitment to the public trust persuaded him to sponsor a constitutional amendment requiring full financial disclosure for all public officials. . . . Askew felt that government belonged to the people and that this relationship was jeopardized by special interests. . . . He felt that there was no such thing as shining too much light on government. . . . " David R. Colburn, *From Yellow Dog Democrats to Red State Republicans: Florida and Its Politics Since 1940*, 92-93 (University Press of Florida 2007).

meeting with citizen groups and editorial boards, personally handing out signature cards in shopping centers and at rallies, and running advertisements with slogans like "This is your chance to endorse government free of suspicion and hidden motive." See, e.g., Tom Fiedler, *Sunshine Amend. is on Nov. ballot*, St. Petersburg Times 1-2B (July 30, 1976), available at http://news.google.com/newspapers?nid=feST4K8J0scC&dat=19760730&printsec=frontpage&hl=en.

Almost every Florida newspaper and numerous civic organizations endorsed the amendment, and many helped distribute the signature cards. On election morning, the St. Petersburg Times editorialized: "Florida voters have a unique opportunity to require that future candidates and officeholders make meaningful financial disclosures that will help show them worthy of the public's trust." *And a big vote for Sunshine*, 12A (Nov. 2, 1976), available at http://news.google.com/newspapers?nid=feST4K8J0scC&dat=19761102&printsec=frontpage&hl=en. The weekly Bradford County Telegraph, urging a yes vote, prophetically stated that "[v]ery little opposition has been expressed to this amendment." *The Amendments*, 12 (Oct. 28, 1976), available at http://ufdc.ufl.edu/UF00027795/04076/4j.

Floridians, weary of scandal and hungry for reform, passed the amendment by a vote of 1,765,626 to 461,940. It was approved in all 67 counties. Dyckman, 219.

The Sunshine Amendment: The amendment that voters ratified so overwhelmingly was titled "Ethics in Government," but it was and remains popularly known as the "Sunshine Amendment." Now entrenched in the Florida Constitution, it reads in part:

> SECTION 8. Ethics in government.–A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse. To assure this right:
>
> (a) *All elected constitutional officers and candidates for such offices* and, as may be determined by law, other public officers, candidates, and employees *shall file full and public disclosure of their financial interests*.

Art. II, § 8(a), Fla. Const. (emphasis added).

The amendment contained a schedule for implementing its requirements – including disclosure of each asset, liability, and source of income in excess of $1,000 – but allowed the schedule to be altered by statute. Art II, § 8(i), Fla. Const.[6] The Amendment also authorized the Florida Legislature to adopt stricter disclosure requirements and prohibitions than those in the Constitution, but forbade statutory changes that would "limit disclosure." Art. II, § 8(h), Fla. Const.

The Legislature made some changes in the original schedule, but none diluted the requirement for full and public financial disclosure. § 112.3144, Fla. Stat. The

[6] The schedule was amended by 1998 revisions to the Florida Constitution, but those revisions did not alter any language pertinent to the petition. Notably, they retained the requirement that secondary sources of income over $1,000 must be reported.

Florida Commission on Ethics ("Commission") has adopted rules and issued disclosure forms for compliance with the statutes. Ch. 34-8, Fla. Admin. Code; see also the link to forms at http://www.ethics.state.fl.us/.

Compliance with constitutionally mandated disclosure: Early challenges to the requirement of full and open disclosure were rejected by Florida and federal courts.[7] *Plante v. Gonzalez*, 575 F. 2d 1119 (Former 5th Cir. 1978), and *Plante v. Smathers*, 372 So. 2d 933 (Fla. 1979). Subsequently, officeholders and candidates – including most plaintiffs in the two cases above – complied with the disclosure mandates without significant problems for more than a decade.

"Blind trusts" proposed and used in lieu of full and public disclosure. A new issue concerning disclosure – but often posed as a question of how public officials can avoid conflicts of interest – arose in 1991. Then-Comptroller Gerald Lewis asked the Commission whether he could place bank stocks he had inherited into a so-called "blind trust." The Commission replied that the stocks still would be in conflict with Lewis's regulatory authority over banks, and told him to sell the holdings. Calling blind trusts a "laudable" idea, the Commission said it did not

[7] Senators who challenged the Sunshine Amendment in these cases had complied with the disclosure statute in place before adoption of the Sunshine Amendment, but resisted filing under the "full and public" standard. *Plante v. Gonzalez*, 575 So. 2d at 1123.

have "authority to, in effect, legislate an entirely new concept into the ethics laws of the state." Comm'n on Ethics Ops. 91-24 and 11-05.

The Commission also advanced the idea of blind trusts in 2006, when it recommended that the Legislature enact laws requiring the Governor and Cabinet members to put their stocks and bonds into either publicly traded mutual funds or "qualified blind trusts." Steve Bousquet, *Blind trusts urged for leaders' stocks*, St. Petersburg Times (Nov. 30, 2006).

Florida's 2010 gubernatorial election brought the issue into sharper focus. Candidate Alex Sink filed tax returns as disclosure, revealing that more than half her net worth was in a blind trust created in 2006, supposedly to avoid conflicts of interest after she became Chief Financial Officer. Sydney P. Freedberg and Adam C. Smith, *CFO Alex Sink's blind trust limits pub. fin. disclosure*, St. Petersburg Times (July 31, 2009), available at http://www.tampabay.com/news/politics/cfo-alex-sinks-blind-trust-limits-public-financial-disclosure/1023641.

Then-candidate Rick Scott also disclosed tax returns[8] and announced he would create a blind trust. Mary Ellen Klas, *Alex Sink, Rick Scott agree to release tax returns and to debate*, TCPalm (Sept. 10, 2010), available at http://www.tcpalm.com/news/2010/sep/10/alex-sink-rick-scott-agree-release-tax-

[8] When constitutional officeholders and candidates for those offices file financial disclosure statements (on a so-called Form 6), they submit forms with the previous year's information. Thus, what candidates Scott and Sink filed in 2010 were their Form 6 disclosures for 2009.

returns-and/. In 2011, the new Governor's attorneys sought and obtained an opinion from the Commission that permitted him to file such a trust instead of full and public financial disclosure, for the stated purpose of avoiding possible conflicts of interest. Comm'n on Ethics Op. 11-05; see also Ltr. from Richard E. Coates and James T. Fuller to Fla. Comm'n on Ethics (2011) (on file with the Comm'n on Ethics).

The Governor's attorneys did not ask the Commission whether a blind trust met the requirements for full and public financial disclosure, and Opinion 11-05 does not treat that subject. Nothing in the Florida Statutes authorized Scott in 2011 (or Sink in earlier years) to satisfy disclosure requirements with a blind trust. Following issuance of the opinion, the Governor filed disclosure papers showing the blind trust with a lump-sum value, but without listing the assets in the trust or their individual values; his disclosure filed in 2012 also submitted the lump-sum blind trust without specifying its holdings.[9]

Statute purporting to satisfy disclosure requirements with a "qualified blind trust." In 2013, the Legislature enacted, and the Governor approved, a statute allowing officeholders and candidates to disclose a so-called "qualified blind trust"

[9] Governor Scott's financial disclosure statements are available through the Commission on Ethics. His Form 6 disclosures for 2010 and 2011 also are available at http://www.integrityflorida.org/rick-scott/ and his 2012 Form 6 is available at http://public.ethics.state.fl.us/Forms/2012/232592-Form6.pdf. Scott has released information about the holdings that initially formed the trust, but he has not reported whether there have been any changes in that initial portfolio.

instead of the constitutionally required full and public financial disclosure. § 112.31425, Fla. Stat. The pertinent portion of that statute reads:

> (5) The public officer shall report the beneficial interest in the qualified blind trust and its value as an asset on his or her financial disclosure form, if the value is required to be disclosed. The public officer shall report the blind trust as a primary source of income on his or her financial disclosure forms and its amount, if the amount of income is required to be disclosed. *The public officer is not required to report as a secondary source of income any source of income to the blind trust.*

Id. (emphasis added).

Following enactment of this law, the Governor's attorneys sought another opinion on the ethics of filing a blind trust to avoid conflicts of interest; the second opinion essentially reaffirmed the earlier opinion. Comm'n on Ethics Op. 13-14; see also Ltr. from Peter Antonacci and James T. Fuller to Fla. Comm'n on Ethics (2013) (on file with the Comm'n on Ethics). Once more, the issue of whether a blind trust met the requirement for full and public financial disclosure was not posed or answered. The papers Scott filed in 2013 again listed the lump-sum blind trust, with no specific information about its contents or their value.

Current context: The Petitioner knows of only one current Florida officeholder or candidate using a blind trust in lieu of full and public financial disclosure. However, the new statute would allow other officials or candidates to file blind trusts in 2014. This petition seeks timely action by the Court, so the issue can be resolved before the qualifying period begins.

The Petitioner challenges the statute, seeks a mandate that the Secretary of State may accept only full and public financial disclosure from constitutional officers and candidates for such offices, and seeks a determination that the Ethics Commission opinions cited above do not modify the constitutional disclosure requirements. Finally, Petitioner asks the Court to retain jurisdiction to assure that all 2014 filings meet the constitutional standard of "full and public" disclosure.

NATURE OF THE RELIEF SOUGHT

The Petitioner seeks the following relief:

(1) A determination that the constitutional requirement for full and public financial disclosure may not be circumvented by a filing that is less than full and public;

(2) Issuance of an extraordinary writ (mandamus) directing the Secretary of State to comply with the provisions of the Sunshine Amendment;

(3) Issuance of an extraordinary writ (mandamus) directing the Secretary of State to refuse the filing papers of any candidate or official who seeks to file a blind trust or any similarly designed instrument that does not result in a full and public financial disclosure as mandated by the Florida Constitution;

(4) A determination that Section 112.31425, Florida Statutes, is invalid because it purports to exempt public officers from the mandatory full and public

financial disclosure required by the Sunshine Amendment, permitting such individuals to file so-called "qualified blind trusts" instead;

(5) A determination that Ethics Commission Advisory Opinions 11-05 and 13-14 do not modify the clear constitutional requirements for full and public financial disclosure;

(6) An order to retain jurisdiction following the 2014 qualifying period, to assure that the financial disclosures filed during that time comply with the requirements of Article II, § 8(a), of the Florida Constitution; and

(7) Such other relief as the Court may find appropriate.

ARGUMENT

Where the Constitution provides clear guidance, yet its provisions are being ignored, this Court will ensure the integrity of the Constitution by exercising its extraordinary writs jurisdiction and by overturning invalid statutes. *Pleus v. Crist*, 14 So. 3d 941 (Fla. 2009) (constitutional duties cannot be circumvented); and *State ex rel. Davis v. City of Largo*, 149 So. 420 (Fla. 1933) (statutes that violate the letter and the spirit of the Constitution must be struck down).

The history of the Sunshine Amendment, rules of constitutional construction, and past court rulings all demonstrate that the Constitution of Florida demands full and public financial disclosure, and that a so-called "blind trust" does

not fulfill the constitutional requirement. The argument below supports a grant of extraordinary relief.

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

The petition seeks to enforce the plain terms of Article II, Section 8(a), of the Florida Constitution: "All elected constitutional officers and candidates for such offices and, as may be determined by law, other public officers, candidates, and employees shall file *full and public disclosure of their financial interests*." (Emphasis added.)

A. The Sunshine Amendment's Requirement for Full and Public Disclosure Is Self-Executing.

In an early case construing the amendment's full financial disclosure provision, this Court made clear that the language on reporting is self-executing. *Plante v. Smathers*, 372 So. 2d at 937. The opinion quotes and applies the principles handed down in *Gray v. Bryant*, 125 So. 2d 846, 851 (Fla. 1960):

> If the provision lays down a sufficient rule, it speaks for the entire people and is self-executing. . . . *The fact that the right granted by the provision may be supplemented by legislation, further protecting the right or making it available, does not of itself prevent the provision from being self-executing*.

(Emphasis added; citations omitted.)

The Sunshine Amendment's straightforward language lays down a sufficient rule. Without doubt, the provision is self-executing.

B. The Amendment's Language Is Clear and Unambiguous.

The most important words to consider in applying the constitutional provisions to the issues of this case are "full" and "public." The Constitution tells us that financial disclosure must be public and it must be full.

It is appropriate to turn to a dictionary to understand these terms. *Lawnwood Med. Ctr., Inc. v. Seeger*, 990 So. 2d 503, 5ll (Fla. 2008) ("Historically, this Court has resorted to dictionary references in defining terms contained in constitutional provisions."). See also *Myers v. Hawkins*, 362 So. 2d 926, 930 (Fla. 1978) ("[W]e initially consult widely circulated dictionaries, to see if there exists some plain, obvious, and ordinary meaning for the words or phrases approved for placement in the Constitution.")

Merriam-Webster Online defines "full" as: "1: containing as much or as many as is possible or normal . . . . 2a: complete especially in detail, number, or duration <a full report> <gone a full hour> <my full share> [2]b: lacking restraint, check, or qualification <full retreat> <full support> . . . ." The same dictionary defines "public" as "exposed to general view." *Available at* http://www.google.com/#q=merriam+webster.

The statute authorizing blind trusts makes evident that such instruments are far from full and public disclosures, particularly when it states that "[t]he public officer is not required to report as a secondary source of income any source

of income to the blind trust." § 112.31425(5), Fla. Stat.

An officer or candidate filing a blind trust discloses only a lump-sum value of holdings within the trust and lump-sum income earned on those holdings. This is neither complete in detail and number nor exposed to general view; it is neither full nor public disclosure. Such trusts may hide financial transactions from the person establishing the blind trust,[10] but what is hidden from that person is also hidden from the public. By their very definition, blind trusts cannot satisfy the Sunshine Amendment.

C. The Intent of the Sunshine Amendment is Transparency and Openness.

This Court has spoken to the intent of the Constitution's "full and public" financial disclosure provision:

> Of utmost importance to our determining the intent of the people in adopting article II, section 8 (a) and (h), is their expressed desire to be informed as to the personal finances of those they will be voting to put into office because of their legitimate concern to avoid conflicts of interest and since they feel that, *armed with this knowledge, they will be able to discern the interests to which a public official most likely will be responsive. . . . Our form of government is based upon an enlightened choice by an informed electorate, and in Florida the people have expressly declared their desire that this information be made available to them by candidates for elected constitutional office.*

[10] *Merriam-Webster Online* defines a "blind trust" merely as "an arrangement in which the financial holdings of a person in an influential position are placed in the control of a fiduciary in order to avoid a possible conflict of interest." It does not mention disclosure. *Available at* http://www.google.com/#q=merriam+webster.

Plante v. Smathers, 372 So. 2d at 937 (emphasis added; citations omitted).

According to the Court's own analysis, the voters in 1976 believed they – not the officeholder or candidate – would be the best judge of whether that person had conflicts of interest, but they needed adequate, open, and transparent information to make such determinations.

D. The Sunshine Amendment's Provisions May Not Be Weakened.

The Court has held that the Legislature may not dilute constitutional mandates, and the Sunshine Amendment requires that lawmakers may only strengthen its requirements, not weaken them. The blind trust statute is contrary to those instructions.

When constitutional provisions are self-executing, as they are here, "the Legislature may provide additional laws . . . assuming that such laws supplement, protect, or further the availability of the constitutionally conferred right, but the Legislature may not modify the right in such a fashion that it alters or frustrates the intent of the framers and the people." *Browning v. Fla. Hometown Democracy, Inc., PAC*, 29 So. 3d 1053, 1064 (Fla. 2010).

The amendment itself directs that its provisions must "not be construed to limit disclosures and prohibitions which may be established by law to preserve the public trust and avoid conflicts between public duties and private interests." Art. II, § 8(h), Fla. Const.

The Legislature is constitutionally prohibited from enacting legislation which erodes or diminishes the scope of financial disclosure. The statute challenged here is precisely the type of law the Constitution prohibits.

II. RULES OF CONSTRUCTION REQUIRE THAT "FULL AND PUBLIC FINANCIAL DISCLOSURE" BE CONSTRUED TO GIVE MEANING.

A. The Starting Point for Analysis Is the Constitutional Language.

This Court traditionally enforces constitutional mandates whose language is clear. *Allen v. Butterworth*, 756 So. 2d 52, 61 (Fla. 2000) (constitutional language on court jurisdiction may not be "enlarged or abridged" by the Legislature). As the Court said in *Ford v. Browning*: "If the constitutional language is clear, unambiguous, and addresses the matter at issue, it must be enforced as written, and courts do not turn to rules of constitutional construction." 992 So. 2d 132, 136 (Fla. 2008).

The language of the Sunshine Amendment is clear and direct. The Court need look no further to understand that it cannot be satisfied by a blind trust.

B . Circumstances Surrounding Adoption of the Sunshine Amendment Provide Context for Construing Its Language.

The Court often relies on a provision's history to guide construction.[11]

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[11] Interpreting the constitutional-redistricting intent standard, the Court held that "the focus of the analysis must be on both direct and circumstantial evidence of intent." *In re Sen. Jt. Res of Legis. Apportionment 1176 (Apportionment I)*, 83 So. 3d 597, 617 (Fla. 2012)

Plante v. Smathers applied that principle to the Sunshine Amendment: "We may glean light for discerning the people's intent from historic 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." *Id*. at 936. Those principles, applied here, demonstrate that the amendment was drafted and passed to require full and public financial disclosure.

1. **Statements made by the amendment's principal advocate, Governor Reubin Askew, demonstrate that the drafters intended full disclosure.**

Askew's statements about the Sunshine Amendment were strong and consistent:

* At the kickoff of the petition drive: "[The] cornerstone is full and public financial disclosure . . . . There are no panaceas; but I am firmly convinced that adoption of the Sunshine Amendment is the greatest single step, and perhaps the most positive step, we can take to restore the confidence of the people . . . ." St. Archives of Fla., Rec. Grp. 67, Box 4, File "November 1975."

* In his speech to the Legislature on the opening day of the 1976 legislative session: "The people of Florida are telling us we must be accountable for what we do and what we say in public office. They are telling us that public office must be viewed as a public trust." *Gov's Address*, J. of the H. of Reps. 7 (Apr. 6, 1976).

* On the day the amendment was certified for the ballot: "I think the people would want to be assured that public officials are working for them and not for any selfish interest." Assoc'd Press, *Askew Sunshine Pets. Put Proposed Law on Ballot*, Ocala Star Banner 4A (July 30, 1976), available at http://news.google.com/newspapers?nid=hXZnTIgIr50C&dat=19760730&printsec=frontpage&hl=en.

* After the final election results were announced: "The people have spoken clearly and decisively in placing a strong mandate in the Constitution for ethics in government." Assoc'd Press, *Sunshine Amend. Gets OK*, Daytona Beach Morning J. 3A (Nov. 3, 1976), available at http://news.google.com/newspapers?nid=OWslULmvb_UC&dat=19761103&printsec=frontpage&hl=en.

2. <u>Media reports and editorials show that voters had been told the amendment would require full and public disclosure.</u>

In discerning voter intent, courts also often rely on publications that would have influenced and reflected the popular perception of a ballot measure. In *Plante v. Smathers*, this Court stated: "The materials available to the voters at the time of their adoption of this constitutional provision reflect that they understood that all candidates would be required to disclose before they could ask the people to trust them with the responsibilities of government." *Id*. at 937.

During the yearlong campaign, newspapers across Florida reported that the Sunshine Amendment would require "full and public disclosure of . . . financial interests" and that officials and candidates would be required to list all their assets

over $1,000 and *either* their most recent federal income tax returns *or* a list of all income sources over $1,000. See, e.g., Fiedler, *Sunshine Amend. is on Nov. ballot*, *supra.* Newspaper editorials were enthusiastic, with one noting that the amendment would "discourage public officials from attempting to direct business favors to their law partners or other associates. The people have a right to know any sources of an official's outside profits, direct or indirect." *And a big vote for Sunshine*, *supra*.

3. <u>Early court decisions found the amendment's purposes compelling.</u>

As seen above, this Court grounded its decision in *Plante v. Smathers* on the voters' "expressed desire to be informed as to the personal finances of those they will be voting to put into office . . . since they feel that, armed with this knowledge, they will be able to discern the interests to which a public official most likely will be responsive." 372 So. 2d at 937.

Judge John Minor Wisdom's opinion in *Plante v. Gonzalez* went into even greater detail about the amendment's purposes:

> Disclosure . . . makes voters better able to judge their elected officials and candidates for those positions. . . . *It is relevant to* the *voters to know what financial interests the candidates have*. As the Supreme Court said, in discussing campaign contributions, the knowledge will "alert the voter to the interests to which a(n official) [sic] is most likely to be responsive".

575 F. 2d at 1135 (emphasis added) (citations omitted).

Judge Wisdom continued his analysis: "[T]he existence of the reporting requirement will discourage corruption. Sunshine will make detection more likely." *Id*. This opinion even spoke to the importance of having specific financial information, stating that "[w]hile sufficiently narrow ranges would convey much useful information, increasing the specificity will increase the value of the information." *Id*. at 1136.

It is only common sense – upon reading the constitutional language, the history behind it, and the court opinions upholding disclosure – to find that a blind trust does not comply with the mandate of full and public disclosure.

C. The Court Should Not Accept a Construction That Reaches an Absurd Result.

It is a standard rule of constitutional construction that "an interpretation of a constitutional provision which will lead to an absurd result will not be adopted when the provision is fairly subject to another construction which will accomplish the manifest intent and purpose of the people." *Plante v. Smathers*, 372 So. 2d at 936. There, the Court concluded it would be "an absurd result totally incongruous with the will of the people" to hold that candidates who qualified for office after July 1 did not need to file financial disclosure until the following July. *Id*. at 937.

The Sunshine Amendment requires that things be revealed; blind trusts require that things be concealed. It would be absurd to conclude that the latter is an adequate substitute for the former.

III. THE STATUTE AUTHORIZING BLIND TRUSTS IS INVALID.

When legislation violates both the letter and the spirit of the Constitution – as the blind trust statute does – "it becomes not a mere privilege, but a solemn duty of the court to declare such act unconstitutional and void." *State ex rel. Davis*, 149 So. at 421.

A. The Legislation Contradicts a Clear Provision of the Florida Constitution.

Where the Constitution provides clear guidance, the Legislature has no power to displace its command. This Court has stated that

> [I]t must be presumed that those who drafted the Constitution had a clear conception of the principles they intended to express, that they knew the English language and that they knew how to use it, that they gave careful consideration to the practical application of the Constitution and arranged its provisions in the order that would most accurately express their intention.

Ervin v. Collins, 85 So. 2d 852, 855 (Fla.1956).

The plain clear language of the Sunshine Amendment admits no exceptions to full and public financial disclosure. Section 112.31425 of the Statutes violates the Constitution.

B. Advisory Opinions from the Commission on Ethics Do Not Make the Statute Constitutional.

The Commission on Ethics fulfills the constitutional directive for an independent body to oversee the ethical conduct of constitutional officers and employees who are not part of the judicial branch. Art. II, § 8(f), Fla. Const., and

§ 112.320, Fla. Stat. But its advisory opinions 11-05 and 13-14, concluding that a blind trust shields the Governor from conflicts of interest, cannot make the challenged statute constitutional.

The opinions fail in several ways to validate the statute. The first was issued two years before there was *any* authority – even the challenged statute – to substitute a blind trust for full and public financial disclosure. Both opinions answer only limited conflict-of-interest questions, and never mention full and public disclosure. Finally, the Commission cannot rule on the constitutionality of a state statute, even one it is charged with interpreting. *Comm'n on Ethics v. Sullivan*, 489 So. 2d 10 (Fla. 1986). The judicial branch alone can decide whether a statute is constitutional. Art. V, § 3(b)(1), Fla. Const. See *Locke v. Hawkes*, 595 So. 2d 32, 36 (Fla. 1992).

This Court, not the Commission, is the appropriate body to determine whether a blind trust can satisfy the will of the people as embodied in the Florida Constitution.

C. The Legislature May Not Displace or Void the Sunshine Amendment.

Two Florida cases from the 1940s stand for the proposition that the Legislature may not manipulate the meaning of the Constitution by distorting basic words or principles. Both cases concern legislative efforts to redefine freshwater bodies as saltwater, after new constitutional provisions transferred authority over

freshwater fishing from the Legislature to the newly created Game and Freshwater Fish Commission.

Resisting the constitutional shift of power, lawmakers enacted statutes declaring Lake Okeechobee and portions of the St. Johns River to be saltwater, and therefore within the Legislature's power to regulate, although practical experience as well as science demonstrated the waters to be fresh.

This Court rejected those attempts to manipulate the Constitution. *State ex rel. Griffin v. Sullivan*, 30 So. 2d 919 (Fla. 1947) and *Beck v. Game and Freshwater Fish Comm'n*, 33 So. 2d 594, 595 (Fla. 1948) ("The question is squarely presented – whether the Legislature can oust the constitutional Commission from control over fresh water fish . . . by making a legislative finding that said waters are salt.").

The legislative premise that a blind trust satisfies the constitutional requirement of full and public financial disclosure is as erroneous and misguided as the legislative findings that attempted to turn fresh water into salt. A legal instrument that does not fully disclose assets can never be reconciled with the Sunshine Amendment. Section 112.31425, Fla. Stat., is invalid.

IV. CONCLUSION: EXTRAORDINARY RELIEF IS PROPER.

This Court said in *Pleus*: "To be entitled to mandamus relief, 'the petitioner must have a clear legal right to the requested relief, the respondent must have an

indisputable legal duty to perform the requested action, and the petitioner must have no other adequate remedy available.'" 14 So. 3d at 945, citing *Huffman v. State*, 813 So. 2d 10, 11 (Fla. 2000).

The Petitioner has a clear and certain right under the Constitution of Florida to full and public financial disclosure by constitutional officeholders and candidates for such offices. The Legislature has attempted to displace that right by authorizing the filing of "qualified blind trusts." The upcoming general election will be the first since the statute took effect, and the law creates confusion about the Secretary's nondiscretionary ministerial duties to accept disclosure statements.

THEREFORE, the Petitioner urges the Court to:

(1) Determine that the constitutional requirement for full and public financial disclosure may not be circumvented through a disclosure that is less than full and public;

(2) Issue an extraordinary writ (mandamus) directing the Secretary of State to comply with the provisions of the Sunshine Amendment;

(3) Issue an extraordinary writ (mandamus) directing the Secretary of State to refuse the filing papers of any candidate or official who seeks to file a blind trust or any similarly designed instrument that does not result in a full and public financial disclosure as mandated by the Florida Constitution;

(4) Determine that Section 112.31425, Florida Statutes, is invalid because it purports to exempt public officers from the mandatory full and public financial disclosure required by the Sunshine Amendment, permitting such individuals to file so-called "qualified blind trusts" instead;

(5) Determine that Ethics Commission Advisory Opinions 11-05 and 13-14 do not modify the clear constitutional requirements for full and public financial disclosure;

(6) Retain jurisdiction following the 2014 qualifying period, to assure that the financial disclosures filed during that time comply with the requirements of Article II, § 8(a), of the Florida Constitution; and

(7) Provide such other relief as the Court may find appropriate.

Respectfully submitted,

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CERTIFICATES OF FONT SIZE AND SERVICE

We hereby certify that this Petition has been prepared using Times New Roman 14 point type.

We also certify that the Petition was served on the following persons this 14th day of May 2014:

Secretary of State Ken Detzner
by paper service of process,
as his office instructed

Florida Attorney General Pam Bondi
by electronic service,
at oag.civil.eserve@myfloridalegal.com

Also on this 14th day of May 2014, courtesy copies of the Petition were delivered electronically to the offices of Governor Rick Scott, Florida Senate President Don Gaetz, and Florida House Speaker Will Weatherford.

/s/ *Talbot D'Alemberte*
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/s/ *Patsy Palmer*
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