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Supreme Court of Florida

Case No.: SC14-924

JAMES APTHORP,
Petitioner,

v.

KENNETH DETZNER,
Florida Secretary of State,
Respondent.

RESPONSE TO PETITION

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RESPONSE TO PETITION

Florida Attorney General Pamela Jo Bondi responds to the "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" on behalf of Respondent.

INTRODUCTION

Petitioner asks this Court to exercise its extraordinary writ jurisdiction—on an emergency basis—to invalidate a statute that has been on the books for more than a year and to outlaw a practice that has been in place far longer. He asks the Court to change candidate qualification rules after one statutory qualifying period ended and just before another begins. And he seeks to impose on the Secretary a new duty to evaluate financial disclosure documents for "fullness," when the Election Code specifically provides that the Secretary may not look beyond the documents' four corners. This Court should deny the Petition because there is no basis for jurisdiction, there is no merit to the legal claim, and there certainly is no emergency.

Petitioner's claim is that a candidate with a qualified blind trust cannot satisfy the "full and public disclosure of financial interests" the Sunshine Amendment requires. *See* Art. II, § 8(b), Fla. Const. Petitioner is wrong, and Florida officials have in fact relied for years on blind trusts to avoid conflicts of

interest. Until now, no person has challenged their propriety—especially not in an emergency Supreme Court original action on the eve of a qualifying period. Indeed, blind trusts have been widely accepted as promoting the very purpose of the Sunshine Amendment: to avoid conflicts of interests.

Governor Bush held assets in a blind trust when he was in office. Chief Financial Officer Sink did too. *See* Sink 2010 Financial Disclosure.[1] Running for Governor four years ago and holding substantial assets in a blind trust, CFO Sink explained that "[n]ewspapers, elected officials, ethics experts and even the Florida Commission on Ethics all have endorsed blind trusts for elected officials. A blind trust represents a critical step toward assuring ethical conduct and ought to be required of every person who holds public office." Sydney P. Freedberg & Adam C. Smith, *CFO Alex Sink's blind trust limits pub. fin. disclosure*, St. Petersburg Times (July 31, 2009) (cited in Pet. at 8).

Agreeing that blind trusts support ethical conduct, and responding to recommendations in a 2010 statewide grand jury report and a Florida Commission on Ethics legislative proposal, the Florida Legislature enacted specific blind trust requirements.[2] Modeled after a federal law enacted in 1978, Florida's new law

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[1] More recent financial disclosures, including CFO Sink's, are available on the Secretary of State's website. *See* http://election.dos.state.fl.us/PublicRecordsBER/wfPublicImagesBER.aspx?account=50275.

[2] *See* Nineteenth Statewide Grand Jury, Case No. SC 09-1910, First Interim

defines a "qualified blind trust" and ensures that any such device achieves its purpose of promoting ethics in government. Blind trusts—long permissible under Florida law—for the first time face specific, detailed restrictions and requirements. Yet only now, having never complained about blind trusts during their years of use, Petitioner brings his emergency petition.

ARGUMENT

I. PETITIONER IS NOT ENTITLED TO THE EXTRAORDINARY RELIEF HE SEEKS.

Mandamus is a "'narrow, extraordinary writ,'" for narrow, extraordinary circumstances. *Matthews v. Crews*, 132 So. 3d 776, 779 (Fla. 2014) (quoting *Sica v. Singletary*, 714 So. 2d 1111, 1112 (Fla. 2d DCA 1998)). It "traditionally has been, and will continue to be, employed sparingly." *Brown v. Firestone*, 382 So. 2d 654, 671 (Fla. 1980); *accord State ex rel. West v. Gray*, 74 So. 2d 114, 120-21 (Fla. 1954). To succeed, Petitioner must establish (1) a clear legal right to relief, (2) that the Secretary has an indisputable legal duty to act as Petitioner demands, and (3) that there is no other adequate legal remedy. *Huffman v. State*, 813 So. 2d 10, 11 (Fla. 2000) (citing *Turner v. Singletary*, 623 So. 2d 537, 538 (Fla. 1st DCA

Report, *A Study of Public Corruption in Florida and Recommended Solutions* (Dec. 29, 2010), *available at* http://myfloridalegal.com/webfiles.nsf/WF/JFAO-8CLT9A/$file/19thSWGJInterimReport.pdf; Florida Commission on Ethics, *Annual Report to the Florida Legislature For Calendar Year 2012, available at* http://www.ethics.state.fl.us/publications/2012%20Annual%20Report.pdf.

1993)). Petitioner fails all three elements, but this Court should dismiss without even indulging them. Petitioner's inexcusable delay is grounds enough.

A. This Court Should Dismiss Because of Petitioner's Inexcusable Delay.

Never a matter of right, mandamus is a discretionary writ granted "in the exercise of a sound judicial discretion and upon equitable principles." *State ex rel. Haft v. Adams*, 238 So. 2d 843, 844 (Fla. 1970). The equitable considerations include the timing of the petition, so even when mandamus might otherwise be appropriate, this Court has denied relief when petitioners' delay "would result in disorder, confusion and disturbance." *Id.* (discussing *State ex rel. Long v. Carey*, 164 So. 199 (Fla. 1935)). In *Adams*, for example, this Court found that regardless of the merits, "we are not disposed to lend our aid to Relator in furtherance of his plan to belatedly take advantage of what may be some confusion." *Id.* at 845. The Court noted the record of delay between the Relator's learning of the situation and his filing the case. *Id.* To act at the late date "even if a clear legal right were shown" would "injuriously affect the rights of third persons." *Id.*; *accord Carey*, 164 So. 2d at 206.

Similarly, in *Driver v. Adams*, Justice Roberts concurred specially in the Court's decision quashing a writ of mandamus. 196 So. 2d 916, 916 (Fla. 1967) (Roberts, J., concurring). "[I]n my opinion, the petitioners are guilty of laches.

[The challenged statute] has been in existence for a number of years, yet petitioners come here on the very eve of an election seeking the extraordinary remedy of mandamus." *Id.*; *cf. also Fla. Senate v. Fla. Ass'n of Realtors, Inc.*, 829 So. 2d 854, 855 (Fla. 2002) (Pariente, J., concurring) (noting that "artificial emergencies" arise when objectors wait until right before an election to file lawsuits).

Petitioner likewise creates an artificial emergency—he files on the eve of a qualifying period his action would disrupt. Offering no explanation for his delay, Petitioner even notes that the issue was highlighted during the 2010 gubernatorial election when CFO Sink had her assets in a blind trust. Pet. at 8. And the practice in Florida dates back farther: Governor Bush placed his investments in a blind trust when he was elected in 1998. Sarasota Herald Tribune, *A question of trust*, Section A (Dec. 2, 2006). The use of blind trusts was no secret to Petitioner or his counsel.

If Petitioner viewed either Jeb Bush's or Alex Sink's years-old blind trust as an emergency like that now proclaimed (and there is no obvious reason why he should not have), the issue would be long resolved, and third parties would not face the uncertainty Petitioner creates. Even if Petitioner were correct that "[n]o other court can handle the issue in a timely manner," Pet. at 2, it would be his own fault for idly standing by.

Petitioner presumably will argue that the 2013 statute somehow ripened the issue. *Cf.* Pet. at 2 ("This will be the first general election since the challenged statute was enacted in 2013 . . . ."). But the statute makes his action no timelier. If a qualified blind trust does not satisfy the Sunshine Amendment with a statute expressly permitting it, then an (unqualified) blind trust surely did not satisfy the Sunshine Amendment *without* a statute expressly permitting it. In other words, if the action lies today, it lay four years ago when Alex Sink qualified to run for office and years earlier when Jeb Bush did the same. Petitioner makes no effort to argue otherwise.

And even if the 2013 statute enhanced the need for judicial action, recall that it was a *2013* statute. Governor Scott signed the bill into law on May 1, 2013, and it became effective immediately. Yet Petitioner waited more than a year to declare his emergency. A timely action could have ended before this untimely action began.

A timely action also would have avoided disrupting a qualifying process that already began. Although Petitioner's interest appears directed at only one candidate, *see* Pet. at 10 ("Petitioner knows of only one current Florida officeholder or candidate using a blind trust . . . ."), he ignores all the candidates already qualified for placement on the 2014 ballot. Cabinet officers and legislators qualify between June 16 and June 20, but judicial officers, state attorneys, and

public defenders qualified between April 28 and May 2. *See* § 99.061(1), Fla. Stat.; § 105.031, Fla. Stat. By asking to change the rules between the two qualifying periods, Petitioner asks that the 2014 election proceed with two different sets of rules. Petitioner's requested relief would presumably include disqualifying from the ballot any candidate who already qualified listing trust assets or income without detailing the underlying assets.

It is no answer to say the case must proceed because of the issue's importance. In *Sancho v. Smith*, the issue was whether a constitutional amendment relating to the death penalty could appear on the ballot. 830 So. 2d 856, 858 (Fla. 1st DCA 2002). The District Court certified the question as qualifying for pass-through jurisdiction, *id.* at 861, which exists solely for cases "of great public importance" that "require immediate resolution by the supreme court," Art. V, § 3(b)(5), Fla. Const. Opposing the pass-through, appellees argued that to "the extent that the proximity to the 2002 general election drives the emergency nature of this proceeding, it is an emergency created solely by the failure of the Appellants to timely bring their complaints before the court." *Fla. Senate*, 829 So. 2d at 856 (Pariente, J., concurring) (quoting parties' response). In *Sancho*, as in this case, "there was well over a year in which to challenge the legislation." *Id.* (Pariente, J., concurring). This Court denied jurisdiction in *Sancho*, 830 So. 2d at 861, and it should here too.

B. This Court Should Dismiss Because Petitioner Has No Clear Legal Right.

Because Petitioner seeks emergency mandamus relief—as opposed to a declaratory judgment—the issue is not whether his legal claims are valid; the issue is whether Petitioner has demonstrated a legal right that is "clear and complete." *Carey*, 164 So. at 205. Mandamus does not "establish the existence of such a right, but [serves] only to enforce a right already clearly and certainly established in the law." *Fla. League of Cities v. Smith*, 607 So. 2d 397, 400-01 (Fla. 1992) (citing *State ex rel. Glynn v. McNayr*, 133 So. 2d 312 (Fla. 1961); *State v. Gray*, 111 So. 242, 243 (Fla. 1927) (writ unavailable "in cases of doubtful right"); *Fla. Soc'y of Newspaper Editors, Inc. v. Fla. Pub. Serv. Comm'n*, 543 So. 2d 1262 (Fla. 1st DCA), *review denied*, 551 So. 2d 461 (Fla. 1989)).

The blind trust law is entirely consistent with the Florida Constitution. *See* Part III, below. But even if there were a right to relief, there is no *clear* right. No court (or at least no published appellate decision) has addressed the challenged statute, much less invalidated it. Nothing in the legislative record suggests any invalidity; not a single legislator voted against the law. And blind trusts have been accepted in Florida for years without challenge.

Like other legislative acts, the statute carries a substantial presumption of constitutionality, *see Crist v. Fla. Ass'n of Criminal Defense Lawyers, Inc.*, 978 So.

2d 134, 139 (Fla. 2008), and the law's invalidity is not "clearly and certainly established." Because Petitioner seeks to establish new law, this Court should dismiss.[3] *See Sancho v. Joanos*, 715 So. 2d 382 (Fla. 1st DCA 1998) (reversing writ of mandamus where petitioner sought to establish right, rather than enforce a right already established).

C. This Court Should Dismiss Because the Secretary Has No Indisputable Legal Duty to Do What Petitioner Demands.

Petitioner asks for a writ "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." Pet. at 11. The Court can order this relief only if the Secretary has an indisputable legal duty to do just that. The primary question is whether the Secretary has an indisputable legal duty to reject filings that the Florida Elections Code commands him to accept. A secondary question—

[3] This Court has entertained mandamus actions testing the constitutionality of statutes in limited, unique circumstances. *See, e.g.*, *Allen v. Butterworth*, 756 So. 2d 52, 54-55 (Fla. 2000); *Moreau v. Lewis*, 648 So. 2d 124, 126 (Fla. 1995). But the issues in those cases had broad application to many cases requiring immediate resolution to avoid adversely affecting the functions of government. Not so here. Regardless, this Court has more recently explained that "[c]hallenges to the constitutionality of ordinary legislative acts passed by the Legislature must be brought in a trial court and then reviewed by a district court of appeal." *In re Senate Joint Resolution of Legislative Apportionment 1176*, 83 So. 3d 597, 606 (Fla. 2012).

also pertinent here—is, assuming he has such a duty in the abstract, whether he has any specific duty as to any specific filing at this specific time.

1. The Secretary's Ministerial Duty Is Limited to Determining Whether Qualifying Papers Are Completed; He Does Not Determine Accuracy or "Fullness" of Disclosures.

The Secretary does not enforce the qualified blind trust statute. His role in this process is to collect and process candidate qualifying papers. To qualify for election, a candidate must provide specific forms, including a candidate oath, financial disclosure, and campaign treasurer appointment. § 99.061(7)(a), Fla. Stat. The Secretary qualifies candidates who provide the required documents; he does not qualify candidates who do not. Therefore, if a candidate refused to provide a financial disclosure document—or a candidate oath, or any other requirement—the Secretary will not qualify him. *Id.* ("In order for a candidate to be qualified, the [specified] items must be received . . . ."). That is where the Secretary's duties end.[4]

[4] The Secretary qualifies candidates for state and multicounty offices, but the supervisors of election qualify candidates for local offices, including county offices. § 99.061(1), Fla. Stat. (candidates qualifying with the Secretary); *id.* at (2)-(3) (candidates qualifying with the supervisors of election); § 105.031(1), Fla. Stat. (regarding judicial offices). Because the pertinent qualification provisions apply generally whether the Secretary or supervisor of elections is the qualifying officer, Petitioner's requested relief would affect the supervisors of elections in the same way it would affect the Secretary. Petitioner has not elected to join any supervisor of elections.

By law, the Secretary "may not determine whether the contents of the qualifying papers are accurate." § 99.061(7)(c), Fla. Stat. His review is limited to determining "whether [all required items] have been properly filed and whether each item is complete *on its face*." *Id.* (emphasis added). In fact, for officers who have already filed their annual report with the Ethics Commission, the law allows them to simply provide a copy to the Secretary at qualifying. § 99.061(7)(a)(5), Fla. Stat. The Secretary's "charge under the constitution and statute does not extend to the substance or correctness or enforcement of a sworn compliance with the law." *State ex rel. Shevin v. Stone*, 279 So. 2d 17, 22 (Fla. 1972). Once a candidate delivers his qualifying papers and "states his compliance, under oath, the Secretary's ministerial determination of Eligibility for the office is at an end. Any challenge to the correctness of the candidate's statement of compliance is for appropriate judicial determination" in a proper challenge in a court with jurisdiction to provide a remedy. *Id.*; *cf. also State ex rel. Cherry v. Stone*, 265 So. 2d 56, 58 (Fla. 1st DCA 1972) ("Since the Secretary not only has no clear legal duty to determine whether Wright has complied with the Resign-to-Run Law, but even if he were so inclined would be without authority to do so, we cannot issue a writ commanding him to do that which he is powerless to do.").

Having waited until the election season has begun and one qualification period has ended, Petitioner attempts to both establish a clear legal right and have

it enforced by mandamus in this Court. But the only obligation that is *currently* established is the Secretary's "ministerial function" to review qualifying papers and qualify those candidates who have filed each requisite items that is "complete on its face." § 99.061(7)(c), Fla. Stat.

If the Court ordered the requested relief, the Secretary would, for the first time, be charged with evaluating financial disclosure statements for their completeness and accuracy. In most instances, this would be an impossible task. It is up to the disclosing candidate to describe his or her assets, and it would not always be clear whether disclosed assets were part of a "qualified blind trust." Many officers disclose trust assets (or other investment account assets) without identifying each underlying asset, and even under Petitioner's asserted rule, not all underlying secondary and tertiary assets are subject to specific identification.

The Legislature limited the Secretary's ministerial function to collecting documents and evaluating their completeness on their face for good reason. The Secretary has no ability to go behind the filings and evaluate them for accuracy or "fullness." Therefore, even if the Secretary knew of inaccuracy in a particular financial disclosure, it would not be his duty to disqualify the candidate; indeed, if

the form were complete on its face, the Secretary's duty is to *qualify* the candidate.[5]

2. Regardless, Petitioner Bases His Claim On Speculation, Alleging No Concrete Action the Secretary Has Failed to Take.

Petitioner's claim would be bad enough if it were directed to a particular qualifying paper. It is worse because it presents only abstract claims, speculating about what *might* happen and seeking prospective, conditional, and hypothetical relief. This Court has no jurisdiction to offer such advisory opinions. *See Santa Rosa County v. Admin. Comm'n, Div. of Admin. Hearings*, 661 So. 2d 1190, 1193 (Fla. 1995) ("Florida courts will not render, in the form of a declaratory judgment, what amounts to an advisory opinion at the instance of parties who show merely the *possibility* of legal injury on the basis of a hypothetical 'state of facts which have not arisen' and are only 'contingent, uncertain, [and] rest in the future.'") (quoting *LaBella v. Food Fair, Inc.*, 406 So. 2d 1216, 1217 (Fla. 3d DCA 1981) (alterations in original)).

[5] Florida law allows for amended disclosures, which officers routinely utilize. If the Secretary were bound to disqualify any candidate whose qualification papers were inaccurate, he would necessarily be bound to disqualify any candidate who filed an amended disclosure after the qualification deadline. That would not only contradict law, but also discourage candidates from amending to correct errors or omissions, thereby diminishing public disclosure and contravening the Sunshine Amendment's purposes.

Even if the Secretary had an indisputable duty to act as Petitioner demands assuming events unfold as Petitioner speculates, the Secretary has no indisputable duty to act now. The Secretary has neither accepted nor rejected the Governor's qualification papers, because the Governor has not submitted them, because qualification for gubernatorial election has not opened. This Court simply lacks mandamus jurisdiction to adjudicate a dispute that does not yet exist. Whatever duty the Secretary might have at some hypothetical point in the future, he has no indisputable duty to act now.

D. This Court Should Dismiss Because Petitioner Cannot Show the Absence of an Adequate Alternative Legal Remedy.

Finally, whenever an adequate alternative legal remedy is available, the extraordinary writ of mandamus is not. If Petitioner challenges the sufficiency of any candidate's financial disclosure, he may pursue a claim with the Ethics Commission. Chapter 112, Florida Statutes, "implementing Article II, section 8, sets forth detailed procedures under which the Commission on Ethics is empowered to receive and investigate complaints of violations of the constitutional and statutory financial disclosure provisions." *Norman v. Ambler*, 46 So. 3d 178, 183-84 (Fla. 1st DCA 2010) (note omitted) (citing § 112.324(8), Fla. Stat. (2010)); *see also* § 112.324(4)-(7), Fla. Stat. (directing Commission to report findings and recommendations to appropriate entities in cases involving legislators or

impeachable officers). To the extent the Commission finds any violation, it may "report its findings to the 'proper disciplinary official or body,' which shall have the 'power to invoke the penalty provisions of this part, including the power to order the appropriate elections official to remove a candidate from the ballot.'" *Id.* Because adequate alternatives existed, Petitioner is not entitled to mandamus relief.

II. IF THIS COURT DOES NOT DISMISS, IT SHOULD TRANSFER TO THE CIRCUIT COURT.

Even if there were some basis for the extraordinary writ and the Court did not dismiss the Petition, this Court should not hear it in the first instance. Instead, the challenge would belong in circuit court. *See, e.g.*, *AFL-CIO v. Hood*, 885 So. 2d 373, 374 (Fla. 2004) (noting that mandamus proceeding filed in Florida Supreme Court challenging election statute was transferred to circuit court). By allowing the lower courts to address the legal arguments in the first instance, on later review (if any), this Court would "have the benefit of developed arguments on both sides and lower court opinions squarely addressing the question." *Yee v. City of Escondido, Cal.*, 503 U.S. 519, 538 (1992). The Secretary and other interested parties would have sufficient time and a workable process to develop further defenses, and the final decision would rest on a full and complete record and sounder legal analysis. Acting now, "without the benefit of a full record or lower

court determinations is not a sensible exercise of this Court's discretion." *Lytle v. Household Mfg., Inc.*, 494 U.S. 545, 552 n.3 (1990).[6]

Presumably because of these considerations, this Court transferred a petition for extraordinary writ during the last election cycle—a petition that, like this one, challenged officers' qualifying papers as not "fully and publicly" disclosing financial interests. *Jones v. Detzner*, No. SC12-2297 (Amended Order) (Nov. 8, 2012). The petitioner sought an order removing the candidates from the ballot because they allegedly circumvented the full and public disclosure the constitution requires. This Court transferred the action to the circuit court. *Id.*

In addition, this Court routinely transfers to circuit courts other original actions involving ballot issues. *See Fla. Ass'n of Realtors, Inc.*, 829 So. 2d at 856

[6] Although a statute's constitutionality is a legal issue, *Graham v. Haridopolos*, 108 So. 3d 597, 603 (Fla. 2013), this challenge might involve factual development. As one example, Petitioner asks the Court to direct the Secretary to refuse filing papers of anyone filing "a blind trust or any similarly designed instrument that does not result in a full and public financial disclosure." Pet. at 25. To effect that relief, the Court would need evidence on what a "full" disclosure would be for a particular candidate, what constitutes a "similarly designed instrument," and what other issues might preclude full disclosure. Moreover, it is unknown how the Secretary would even know which candidates have qualified blind trusts based on the face of their disclosures, or how he would make determinations regarding compliance in particular situations. And because equitable interests are at issue, the Court should also hear evidence regarding the burdens the requested relief would have on the Secretary and other qualifying officers throughout the state. *Cf. Diaz v. Cobb*, 541 F. Supp. 2d 1319, 1340 (S.D. Fla. 2008) (upholding election regulation after considering trial evidence of the burden requested relief would impose on elections officials).

(Pariente, J., concurring) ("In the past, we have decided questions regarding legislative ballot summaries through a variety of jurisdictional avenues, none of which appear to be wholly satisfactory. *This Court will no longer hear these challenges through the filing of an original petition for mandamus in this Court.* Thus, the only practical means of seeking review by this Court is through the certification of the case by the district court of appeal under its pass-through jurisdiction or through certifying a question of great public importance after a decision has been rendered." (emphasis added) (note and citation omitted)). Whether the issue is a constitutional amendment's ballot placement or a candidate's ballot placement, this Court should not resolve it in the first instance. If the Court does not dismiss the Petition, it should order its transfer.

III. THE BLIND TRUST STATUTE IS LAUDABLE AND CONSTITUTIONAL.

Finally, even if the Court had jurisdiction to reach the merits of Petitioner's claim, it still must dismiss because the challenged statute is constitutional. The Legislature acted within its authority to define "full and public disclosure," and it acted consistent within the purpose of the Amendment. Even if there were any doubt about that, the doubt must be resolved in the Legislature's favor. *Fla. Ass'n of Criminal Defense Lawyers, Inc.*, 978 So. at 139. The Court will not invalidate a statute unless the invalidity "appear[s] beyond reasonable doubt." *Id.* (quoting

Franklin v. State, 887 So. 2d 1063, 1073 (Fla. 2004)). Petitioner cannot meet this standard.

A. The Constitution Gives the Legislature Authority to Specify Disclosure Requirements.

Relying on both the plain language and the historical purpose of the Sunshine Amendment, Petitioner argues that a blind trust cannot yield "full and public disclosure." Petitioner is wrong again. First, the plain language.

Although Petitioner prefers relying on dictionaries to define "full and public disclosure," Pet. at 14, the Amendment's drafters did not. They chose to define the term themselves: "Full and public disclosure of financial interests shall mean filing with the custodian of state records by July 1 of each year a sworn statement showing net worth and identifying each asset and liability in excess of $1,000 and its value" along with a statement of income or a tax return. Art. II, § 8(i)(1), Fla. Const. Since this Court's duty is to uphold the intent behind the language, this Court cannot disregard the drafters' chosen definition. *See Ervin v. Capital Weekly Post, Inc*., 97 So. 2d 464, 469 (Fla. 1957) ("'statutory definition of a word is controlling and will be followed by the Courts'" (quoting and adopting circuit court order)); *Vocelle v. Knight Bros. Paper Co.,* 118 So. 2d 664, 667 (Fla. 1st DCA 1960) ("When a statute contains a definition of a word or phrase that meaning must be ascribed to the word or phrase whenever repeated in the same

statute unless a contrary intent *clearly* appears . . . .” (emphasis in original)); Sutherland Statutory Construction § 20.8 (7th Ed. 2009) (constitutional definition is binding even if “the definition does not coincide with the ordinary meaning of the words”); *cf. Sebring Airport Auth. v. McIntyre*, 783 So. 2d 238, 244 (Fla. 2001) (“[I]t is the constitution itself, rather than ‘common usage,’ which is the touchstone against which the Legislature’s enactments are to be judicially measured . . . .” (note omitted)).

Ordinarily, a constitutional definition likewise binds the Legislature. But in this case, the Constitution expressly allows the Legislature to alter the definition. The constitutional definition of “full and public disclosure of financial interests” says what the term “shall mean” on the Amendment’s effective date “*and until changed by law*.” Art. II, § 8(i), Fla. Const. (emphasis added). “By law,” of course, means by act of the Legislature. *See Hood*, 885 So. 2d at 375 (“[A]rticle VI, section 1, Florida Constitution, provides that ‘elections shall . . . be regulated by law.’ Under this provision, the Legislature is directed to enact laws regulating the election process.”). Therefore, the Amendment explicitly allows the Legislature to determine the definition.

Constitutional provisions allowing for legislative definitions are not unusual. *See, e.g.*, Art. III, § 19(b), Fla. Const. (“for purposes of this subsection, ‘specific appropriation,’ ‘itemization,’ and ‘major program area’ shall be defined by law”);

Art. VII, § 3(c), Fla. Const. (counties and cities may "grant community and economic development ad valorem tax exemptions to new businesses and expansions of existing businesses, as defined by general law"); Art. VII, § 17(a), Fla. Const. (allowing bonds to finance the "cost of acquiring real property or the rights to real property for state roads as defined by law"). Nor is it unusual for constitutional amendments to provide temporary provisions making the amendments effective immediately without awaiting legislative action, but allowing later legislative action. *See Plante v. Smathers*, 372 So. 2d 933, 938 (Fla. 1979) (disclosure provisions self-executing). For example, when the Constitution introduced judicial nominating commissions, it provided a "schedule" temporarily determining how the commissions would be comprised. Art. V, § 20(c)(5), Fla. Const. But that composition lasted only "until changed by general law," *id.* § 20(c), and the Legislature has subsequently changed it, § 43.291, Fla. Stat. There, as here, the plain language allowed the Legislature to amend the Constitution's temporary provisions.

The plain language was plain because the drafters wanted the Legislature to provide the details for "full and public disclosure." Petitioner rightly credits Governor Askew with spearheading the Amendment, and this Court "judicially know[s]" that the Amendment arose under his leadership, *Williams v. Smith*, 360 So. 2d 417, 418-19 (Fla. 1978). And Governor Askew knew that candidates could

not unilaterally determine what "full and public disclosure" meant—and that the Legislature could provide the needed specificity. "Because a constitution must be a statement of broad principle capable of enduring and evolving with passage of time the Sunshine Amendment was not intended to address every ethics issue. The amendment establishes a foundation and a framework on which we can add the specificity that statutes permit." *Id.* at 419 (quoting Gov. Askew). Hardly cynical or suspicious of the Legislature (as his former chief of staff might be), Governor Askew was "confident the Legislature will respect the expressed desires of the vast majority of Florida voters and move, in good faith, to further extend the Amendment." *Id.* (quoting Gov. Askew). That is why "[t]he Amendment leaves to the Legislature sufficient flexibility to carry out the will and intent of the voters." *Id.* (quoting Gov. Askew); *accord* Bud Newman, *Askew Brings His Petition Campaign to County*, The Palm Beach Post (Nov. 21, 1975), *available at* http://news.google.com/newspapers?id=HPgiAAAAIBAJ&sjid=9M0FAAAAIBAJ&pg=1379%2C1696383 (quoting Gov. Askew: "We have drafted this in such a way that we're not trying to put in concrete into the constitution specifics that should more appropriately be part of a statute.").

The commonsense idea is the Amendment would establish broad principles, and the Legislature—consistent with the will of the people—would provide specifics to establish "workable standards for financial disclosure." *Williams*, 300

So. 2d at 419 (quoting Gov. Askew). None of Petitioner's various news articles or historical papers articulating the Amendment's general principles contradicts this, and he cites nothing to suggest that the Legislature is powerless in this regard.[7]

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[7] If it is relevant that "[n]ewspaper editorials were enthusiastic" about the Sunshine Amendment, Pet. at 20, it is equally relevant that newspaper editorials have been enthusiastic about blind trusts, *see, e.g.*, *Ethics Issue: Blind trusts proposed for state officials' investments*, S. Fla. Sun-Sent., Dec. 8, 2006, at 28A, *available at* 2006 WLNR 21213685 ("legislators should climb all over each other in their eagerness to pass a bill" that would codify a blind trust proposal); *A question of trust: Private assets should be separate from public office*, Sarasota Herald-Trib., Dec. 2, 2006, at A20, *available at* 2006 WLNR 20847483 (characterizing blind trust proposal as "no-brainer" that would put in place "[s]tronger ethical safeguards"); *Blind trusts needed for top officials*, St. Petersburg Times, Dec. 1, 2006, at 20A, *available at* 2006 WLNR 20785252 (noting that Gov. Bush put assets in a blind trust and "had this right" and urging such "ethical standards ought to be mandatory for future governors and Cabinet members"); *Blind trusts for trust: To avoid conflict of private gain by public action*, Daytona News-J., Mar. 10, 2006, at 04A, *available at* 2006 WLNR 4089198 (urging passage of blind trust legislation because "[t]he state's ethics laws are prime for an overhaul that will ensure the public interest never takes [a] back seat to 'special private gain'"); *Matters of trust: Keep Cabinet's private assets separate from public interest*, Sarasota Herald-Trib., Mar. 9, 2006, at A12, *available at* 2006 WLNR 4014853 (advocating for legislation requiring blind trusts). Newspapers and interest groups were also enthusiastic about the legislative reforms that included the blind trust law. *See, e.g.*, *Sound ethics reform*, Pensacola News-J., May 3, 2013, at C6, *available at* 2013 WLNR 10958380 (thanking Gov. Scott for signing SB 2 and "improving state government by trying to rid the Capitol of corruption"); Press Release from Integrity Florida (May 2, 2013) (praising Gov. Scott for signing SB 2 and finding it "encouraging that our state leaders have passed such comprehensive improvements to Florida's ethics laws"), *available at* http://www.integrityflorida.org/integrity-florida-statement-on-gov-scott-signing-historic-ethics-reform-and-campaign-finance-refrom-bills-into-law/; Dan Krassner guest column, *Gaetz, Weatherford delivered on ethics reform*, St. Augustine Record, Apr. 28, 2013, *available at* 2013 WLNR 10407325 (executive director of Integrity Florida stating that "[a]fter a 36-year drought, Florida lawmakers should

Indeed, given the history and Governor Askew's clear statements, "[t]here could hardly be a more specific record of the patent intent of the framers that the Legislature would act to implement the constitutional amendment and supply the needed specifics where required." *Id.* at 419-20 (majority). The Florida Legislature supplied those needed specifics, and a lengthy section of the Florida Statutes details requirements for "full and public disclosure of financial interests." § 112.3144, Fla. Stat. The blind trust provision only adds to that detail, establishing precise requirements where none existed.[8]

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be commended for advancing good government reforms" in the form of SB 2 and 4; "Integrity Florida is grateful to see most of our research recommendations included in the" legislation); *Lawmakers approve solid ethics reform*, Daytona News-J., Apr. 27, 2013, *available at* 2013 WLNR 10427544 (urging Gov. Scott to sign SB 2, which was a "stronger-than-expected ethics reform package"); Press Release from League of Women Voters of Florida (Apr. 24, 2013) (praising passage of SB 2 as "the most significant effort at ethics reform in 37 years in Florida," which included "stronger safeguards against elected officials utilizing their public office for personal financial gain"), *available at* http://www.lwvvc.org/2013-04-24press-release.pdf.

[8] Even if the Constitution did not define "full and public disclosure" or allow the Legislature to do so, it cannot be that the Constitution requires as much disclosure "as is possible," or disclosure "lacking restraint," as Petitioner suggests in citing dictionary definitions. Pet. at 14; *see also Myers v. Hawkins*, 362 So. 2d 926, 930 (Fla. 1978) ("Beyond merely finding dictionary definitions for these terms, however, we are always obliged to interpret a constitutional term in light of the primary purpose for which it has been adopted."). Weekly disclosures, to give one example, would be less "restrained" than annual disclosures, but no one suggests that state officers should disclose more frequently than annually. With any rule, there could always be more.

B. The Blind Trust Law Is Reasonable, Appropriate, and Consistent With the Amendment's Purpose.

That is not to say that the Legislature's authority is without limits under the Sunshine Amendment. The Legislature must act reasonably and must not ignore the Amendment's purpose. *See Dep't of Rev. v. Fla. Boaters Ass'n, Inc.*, 409 So. 2d 17, 19 (Fla. 1981) (legislative authority to define constitutional terms "is not unlimited and must be exercised in a reasonable manner"). Here, the Legislature did not act to evade the Amendment's purpose; it acted to advance it.

"[T]he primary purpose for which the Sunshine Amendment was adopted was to impose stricter standards on public officials so as to avoid conflicts of interest." *Plante*, 372 So. 2d at 936-37; *accord Myers*, 362 So. 2d at 930 (purpose of Sunshine Amendment "was to establish an arsenal of protections against the actual and apparent conflicts of interest which can arise among public officials"). The disclosure requirement was to prevent abuses—not to disclose financial information for its own sake. *Cf. Plante*, 372 So. 2d at 937 (describing voters "desire to be informed as to [candidates'] personal finances . . . . because of their legitimate concern to avoid conflicts of interests"). As the Amendment's first words state, "[a] public office is a public trust. The people shall have the right to secure and sustain that trust against abuse." Art. II, § 8, Fla. Const. Everything else

the Amendment provides—including the disclosure requirement—is "[t]o assure this right." *Id.*

Blind trusts assure this right and are consistent with the Amendment's purpose. A blind trust's salient characteristic is that the "official will have no control over, will receive no communications about, and will (eventually as existing assets are sold and new ones obtained by the trustee) have no knowledge of the identity of the specific assets held in the trust." Jack Maskell, *The Use of Blind Trusts by Federal Officials*, CRS Report for Congress, at 4 (Sept. 23, 2005). This is particularly true of "qualified blind trusts," as provided by the challenged statute. The statute requires that the officer give prompt notice of the blind trust's formation and to disclose all financial interests placed into that trust. § 112.31425(6)(d), Fla. Stat. The trust agreement must not restrict the qualified trustee's ability to transfer or sell an asset, must give the trustee "complete discretion to manage the trust," and must preclude disclosure to the officer or beneficiary "any information concerning replacement assets to the trust." § 112.31425(6)(c), Fla. Stat. If the officer subsequently learns of any replacement assets added to the trust, the officer must amend the financial disclosure statement to include that replacement asset. § 112.31425(7), Fla. Stat. The statute also precludes the officer from "attempt[ing] to influence or exercise any control over decisions regarding the management of assets" in the trust. § 112.31425(3), Fla.

Stat. The public officer "may not have any direct or indirect communication with the trustee with respect to the trust," except in limited situations and only in writing. § 112.31425(4), Fla. Stat. Each of these requirements is fully consistent with the Sunshine Amendment.

It is not a matter of choosing between a blind trust and "full disclosure," as Petitioner suggests. The law continues to require full disclosure. In addition to reporting all assets put into the trust, the officer must report his or her "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." § 112.31425(5), Fla. Stat. If the trust earns income, that too must be disclosed. *See id*. If the qualified blind trust is liquidated while the public officer is still in office, or if he or she learns of replacement assets added to the trust after its formation, the officer must amend the financial disclosure statement to include the previously unreported assets. The officer also must "disclose the previously unreported pro rata share of the trust's interests in the investments or income deriving from any such investments." § 112.31425(7), Fla. Stat. In short, there is full disclosure of financial interest.

Claiming otherwise, Petitioner insists that every asset of the trust must be disclosed as a "financial interest." But the financial interest is in the trust, and that interest is disclosed. An official with a blind trust "will not need to (and will not be able to) identify the particular assets in the 'blind trust' in future financial

disclosure reports, and such assets will not be considered 'financial interests' of the official for disqualification purposes." Jack Maskell, *The Use of Blind Trusts by Federal Officials*, CRS Report for Congress at 4-5 (internal references omitted). The interest the officer knows—the beneficial interest in the blind trust and its value—is disclosed. That is full disclosure.

Notably, even in an ordinary (or un-blind) trust, Florida law requires only that the beneficial interest in the trust be disclosed—not each asset within the trust. The instructions to Form 6, which the Ethics Commission adopts by rule, *see* R. 34-8.002(1), Fla. Admin. Code, require a description of assets, including "beneficial interests in a trust."[9] "For example, list 'Stock (Williams Construction Co.),' 'Bonds (Southern Water and Gas),' 'Bank accounts (First National Bank),' [or] '*Smith family trust*.'" Form 6, at 4 (emphasis added). Officers have qualified for election doing just that—listing the beneficial interest in an ordinary trust without identifying each trust asset. If disclosing the beneficial interest of an ordinary trust is enough, then disclosing the beneficial interest of a blind trust—with its additional protections against conflicts of interest—likewise constitutes "full and public disclosure."

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[9] Form 6 (and the instructions for its completion and filing) is available at http://www.ethics.state.fl.us/FORMS/Form%206_ 2012i.pdf; *see also* Art. II, § 8(i)(1)(b) ("The forms for such source disclosure and the rules under which they are to be filed shall be prescribed by the [Ethics Commission].")

Petitioner argues that none of this is good enough and, implicitly, that voters supporting the Amendment would have rejected the concept of blind trusts. But history suggests otherwise. "[I]t is a cardinal principle of constitutional law that we may resort to the history of the times in order to determine the evil sought to be remedied and the purpose to be accomplished." *Fla. Hosp. Waterman, Inc. v. Buster*, 984 So. 2d 478, 486 (Fla. 2008) (internal quotation and citation omitted). Petitioner details the history of ethics problems in Florida, and that history is well known. *Cf. Plante v. Gonzalez*, 575 F.2d 1119, 1122 n.3 (5th Cir. 1978). But that era suffered problems on the national stage, too. With Watergate a fresh memory, Congress passed the Ethics in Government Act of 1978 ("EIGA"), Pub. L. No. 95-521, 92 Stat. 1824. Like the Sunshine Amendment's command that public officers and candidates "file full and public disclosure of their financial interests," the EIGA required each member of Congress and certain executive officers to make an annual "full and complete statement" regarding assets, income, and other information. §§ 101(a), 102(a), 201, 202(a)-(b), Pub. L. No. 95-521. The same law provided that the member or officer could utilize a "qualified blind trust." §§ 102(e)(2)(A), 202(f)(2), Pub. L. No. 95-421. (Incidentally, the Act defined a "qualified blind trust" in terms nearly identical to those used in section 112.31425.)[10]

[10] As President-elect, Jimmy Carter promoted the idea of a "blind trust" as one

So during the same era Congress *authorized* blind trusts to address conflicts of interest, Petitioner argues that Florida voters *prohibited* blind trusts to address conflicts of interest. In the same "history of the times," with the same "evil sought to be remedied" and the same "purpose to be accomplished," Petitioner necessarily contends that Florida voters saw blind trusts as a problem while Congress saw them as a solution. There is no logic to that, and as Petitioner notes, this Court should reject absurd constitutional constructions. Pet. at 21.

There is additional support for the reasonableness of the Legislature's action. First, a number of other states allow blind trusts for the same reasons Florida does. *See* Fla. Comm'n on Ethics, *Annual Report to the Florida Legislature for Calendar Year 2012*, *supra* note 2, at 26 (2012) ("The ethics laws of many states, as well as the U.S. government, allow a public official to place private financial interests that

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furthering an interest in clean and open government when, "in adopting [his] form of Florida's more recent Sunshine Amendment," gave his interest in his multi-million dollar peanut farm operation to trustees to manage on his behalf. Op-ed, *Carter's Ethics Code Promises New Start*, Daytona Beach News-Journal, Jan. 6, 1977, *available at* http://news.google.com/newspapers?id=KbItAAAAIBAJ&sjid=asoEAAAAIBAJ&pg=2042%2C1875102; *see also Peanut Interests Go to a Trustee*, Boca Raton News, Jan. 4, 1977, *available at* http://news.google.com/newspapers?id=wNwzAAAAIBAJ&sjid=7IwDAAAAIBAJ&pg=7063%2C362683. He designed the transfer to insulate him from any financial gain or loss from any of the peanut company operations and avoid the appearance of a conflict of interest while he [was] president." *Id*. That announcement came at the same time that he announced "strict guidelines for himself and top appointees, including full financial disclosure and rejection of any appearance of conflict of interest." *Id.* That "blind trusts" and full financial disclosure would go together in the mind of a government reformer like President Carter only makes sense.

may pose a conflict of interest with public duties into a 'blind trust.'"). In addition, a recent grand jury report recommended them. This Court convened Florida's Nineteenth Statewide Grand Jury, which issued a 2010 report entitled, "A Study of Public Corruption in Florida and Recommended Solutions." *See supra*, note 2. Noting that "fundamentally government must be based on a shared trust and integrity," Grand Jury Report at 4, the report surveyed "present day corruption in Florida," and found that "[r]eform is essential to remedy the perception that those in leadership roles fail to set a noble example of service and are instead assumed to be egotistical and corrupt," *id*. at 12. To that end, the grand jury made certain recommendations to "be considered in the upcoming legislative session, and continuing sessions, until they are passed." *Id*. at 4, 14. One recommended measure to "reduce the capacity of those who would use a Florida public office for malfeasance" was to "[c]reate a 'blind trust' provision under the Code of Ethics." *Id*. at 14, 67.

The Legislature followed that recommendation. *See* Fla. S. Comm. on Rules, CS for SB 2 (2013) Staff Analysis (Feb. 20, 2013) ("The bill incorporates a recommendation of the Nineteenth Statewide Grand Jury by allowing all public officers to place their assets in a blind trust."). The law, modeled after its federal counterpart, followed the Legislature's unremarkable determination that "if a public officer creates a trust and has no control over the assets therein, his official

actions will not be considered in conflict or to be influenced by private considerations." § 112.31425(1), Fla. Stat. A beneficial interest in that trust "will not give rise to conflict of interest." *Id.*§ 112.31425(2).

The Legislature also relied on the 2012 Annual Report of the Ethics Commission, *see supra* note 2, which included proposals regarding blind trusts:

> The proposal would require disclosure of the assets being placed in the trust, and if the trust is revoked, of the assets remaining. It would prohibit the official from exercising any control over the trust, except for general directions regarding investment goals, requests for distributions, and directions for dealing with assets which might pose a conflict of interest, and would prohibit the official from learning about the trust's investments, except to the limited extent necessary for personal tax returns. The recommendations describe how interests in a blind trust would be reported on the official's financial disclosure statements, limit who can serve as a trustee, prohibit the trustee from investing trust assets in businesses which the trustee knows are regulated by or doing significant business with the official's public agency, and provide for full disclosure if the blind trust is terminated. Finally, they would require that the blind trust must be approved by the Ethics Commission.

Ethics Comm'n Report at 26.

The Ethics Commission's purpose is to promote ethics in government, and it exists to enforce the ethics laws. *See* § 112.320, Fla. Stat. ("there is created a Commission on Ethics, the purpose of which is to serve as guardian of the standards of conduct of [public] officers"). That the Ethics Commission would recommend use of a blind trust undermines any argument that blind trusts are incompatible with the Sunshine Amendment. *Cf. Krivanek v. Take Back Tampa*

Political Committee, 625 So. 2d 840, 844-45 (Fla. 1993) (noting that courts should accord deference to the judgment of officials charged with carrying out laws they enforce).

The Legislature's response to the recommendations of the Ethics Commission, the statewide grand jury, and scores of others, was no attempt to "manipulate the Constitution," Pet. at 24. It was an attempt to enhance the protections it supplies.

CONCLUSION

There is no jurisdiction for this Court to grant mandamus relief. Blind trusts have been widely accepted in Florida for years, and they serve the very interests the Sunshine Amendment promotes. By responding to recommendations of the Ethics Commission and the statewide grand jury, and by enacting detailed regulations of blind trusts, the Legislature acted well within its constitutional authority.

This Court should dismiss.

[signature on following page]

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief was prepared in Times New Roman, 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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I certify that this response was served by email this 19th day of May, 2014, to:

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