

**IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

FLORIDA WILDLIFE FEDERATION, INC.;
ST. JOHNS RIVERKEEPER, INC.;
ENVIRONMENTAL CONFEDERATION OF
SOUTHWEST FLORIDA, INC.; THE SIERRA
CLUB, INC.; AND MANLEY FULLER,

Plaintiffs,

Case No.: 2015 CA 001423

v.

ANDY GARDINER, as President of the
Florida Senate; STEVE CRISAFULLI, as
Speaker of the Florida House of Representatives;
THE FLORIDA LEGISLATURE; and JEFF
ATWATER, Chief Financial Officer of the
State of Florida,

Defendants.

**FIRST AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT AND INJUNCTIVE AND SUPPLEMENTAL RELIEF**

Plaintiffs Florida Wildlife Federation, Inc.; St. Johns Riverkeeper, Inc.; Environmental Confederation of Southwest Florida, Inc.; the Sierra Club, Inc.; and Manley Fuller sue Defendants Andy Gardiner, acting in his capacity as the President of the Florida Senate; Steve Crisafulli, acting in his capacity as Speaker of the Florida House of Representatives; the Florida Legislature; and Jeff Atwater, acting in his capacity as Chief Financial Officer. As grounds for this action Plaintiffs allege:

1. This is an action for a declaratory judgment and supplemental relief and for injunctive relief.

2. This Court has subject matter jurisdiction over this action pursuant to sections 26.012(2)(a) and 86.011, Florida Statutes, because Plaintiffs seek declaratory relief and the rights and interests at issue are not quantifiable in monetary terms.

3. This Court also has subject matter jurisdiction over this action pursuant to section 26.012, Florida Statutes, because Plaintiffs seek injunctive relief.

4. Venue is proper under section 47.011, Florida Statutes, because Defendants are state entities or officers of state entities that maintain their principal headquarters in Leon County, Florida.

INTRODUCTION

5. This lawsuit is brought against the Florida Legislature because it defied the constitutional mandate to appropriate the trust fund monies required by Amendment 1 to the acquisition and restoration of conservation and recreation lands.

6. By an extraordinary 75% vote of the electorate for what thus became Article X, section 28 of the Florida Constitution (commonly and herein referred to as “Amendment 1”), the Florida Constitution was amended nine months ago to dedicate an estimated seven hundred million dollars per year to a trust fund solely for the purposes of acquisition and restoration of conservation and recreation lands.

7. For the people of Florida to pass an initiative constitutional amendment a supermajority of 60% of all voters is required. Here the supermajority – 75% – 125% of the supermajority required by the Constitution.

8. The people of Florida voted for this amendment because it provided for funds to be segregated from other funds and held in trust only for the purposes specified.

9. The Legislature owes the people of the State of Florida a duty to honor and effectuate the intent of the voters in the use of the funds placed in trust under this constitutional amendment.

10. Instead, the Legislature violated its duty, violated the Constitution, and violated the trust to which the voters dedicated these funds when it wrongfully diverted at least \$237 million in trust funds to pay for general state expenses not allowable under the amendment.

11. After the appropriation bill was passed, the Governor vetoed appropriations totaling \$460 million thus creating a \$460 million budget surplus.

12. This lawsuit seeks a declaratory judgment finding that the Legislature has violated the Florida Constitution by misappropriating Amendment 1 funds.

13. This lawsuit also seeks an injunction requiring Jeff Atwater, as Chief Financial Officer of the State of Florida, to remedy the Legislature's misappropriations by transferring to the Land Acquisition Trust Fund \$237,035,332 of the General Revenue surplus created by Governor Scott's vetoes and other surplus General Revenue. That injunction will repay the wrongfully appropriated Amendment 1 monies into the Land Acquisition Trust Fund and reserve it for uses permissible under the Constitution as a remedy for the Legislature's misappropriations.

STATEMENT OF FACTS

The Parties

14. Plaintiff Florida Wildlife Federation, Inc. ("Federation") is a Florida taxpayer that is a Florida nonprofit conservation and education organization with its principal place of business in Tallahassee, Florida. It is a membership-based organization with approximately

11,000 members throughout Florida. The Federation's mission includes the preservation, management, and improvement of Florida's water resources and its fish and wildlife habitats. The Federation is a Florida taxpayer. The action it is bringing is a challenge on constitutional grounds to the Legislature's taxing and spending power.

15. The Federation's individual members residing in Florida are Florida taxpayers and would have standing to bring this action individually. Because the Legislature's actions violate constitutional provisions concerning the subject matter that is the focus of the Federation's mission, and because neither the claim asserted in this action nor the relief requested requires the participation of all of the Federation's members in this action, the Federation has associational standing to represent its members in this action.

16. Plaintiff St. Johns Riverkeeper, Inc. ("Riverkeeper") is a Florida nonprofit membership-based corporation with its primary place of business in Jacksonville, Florida. Riverkeeper is dedicated to the protection, preservation, and restoration of the ecological integrity of the lands and waters of the St. Johns River watershed for current users and future generations. It has over 1,000 members who use and enjoy the waters of the St. Johns River for boating, fishing, and observing birds and other wildlife. Riverkeeper is a Florida taxpayer. The action it is bringing is a challenge on constitutional grounds to the Legislature's taxing and spending power.

17. The Riverkeeper's individual members who reside in Florida are Florida taxpayers and would have standing to bring this action individually. Because the Legislature's actions violate constitutional provisions concerning subject matter that is the focus of Riverkeeper's mission, and because neither the claim asserted in this action nor the relief

requested requires the participation of all Riverkeeper's members in this action, Riverkeeper has associational standing to represent its members in this action.

18. Plaintiff Environmental Confederation of Southwest Florida, Inc. ("ECOSWF") is a Florida nonprofit corporation with its primary place of business in Sarasota, Florida. ECOSWF has approximately 50 members consisting of business entities and other organizations and individuals living in Southwest Florida. ECOSWF is a regional coalition which focuses its efforts on protecting the conservation interests of Southwest Florida, including Charlotte, Collier, DeSoto, Lee, Manatee, and Sarasota Counties. ECOSWF is a Florida taxpayer. The action it is bringing is a challenge on constitutional grounds to the Legislature's taxing and spending power.

19. ECOSWF's members who reside in Florida are Florida taxpayers and would have standing to bring this action individually. Because the Legislature's actions violate constitutional provisions concerning subject matter that is the focus of ECOSWF's mission, and because neither the claim asserted in this action nor the relief requested requires the participation of all of ECOSWF's members in this action, ECOSWF has associational standing to represent its members in this action.

20. Plaintiff Sierra Club, Inc. ("Sierra Club") is a not-for-profit corporation that is incorporated under the laws of California. The purposes of the Sierra Club are to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives. Sierra Club is a Florida taxpayer. The action it is bringing is a challenge on constitutional grounds to the Legislature's taxing and spending power.

21. Sierra Club's members that reside in Florida are Florida taxpayers and would have standing to bring this action individually. Because the Legislature's actions violate constitutional provisions concerning subject matter that is the focus of the Sierra Club's mission, and because neither the claim asserted in this action nor the relief requested requires the participation of all Sierra Club's members in this action, Sierra Club has associational standing to represent its members in this action.

22. Plaintiff Manley Fuller is the President of the Florida Wildlife Federation, a Florida resident and Florida taxpayer, and a resident of Wakulla County, Florida. He has standing to bring this action because this is a challenge on constitutional grounds to the Legislature's taxing and spending power.

23. Defendant Andy Gardiner is the President of the Florida Senate. The President of the Senate is the presiding officer of the Florida Senate. Art. III, § 2, Fla. Const. The Florida Senate, along with the Florida House of Representatives, is responsible for appropriating money to fund state programs, including conservation land acquisition programs. Art. III, §§ 12, 19, Fla. Const. Andy Gardiner is sued in his official capacity as President of the Florida Senate, a capacity in which he has a duty to ensure that appropriations conform to the requirements of the Florida Constitution.

24. Defendant Steve Crisafulli is the Speaker of the Florida House of Representatives. The Speaker of the House of Representatives is the presiding officer of the Florida House of Representatives. Art. III, § 2, Fla. Const. The Florida House of Representatives, along with the Florida Senate, is responsible for appropriating money to fund state programs, including conservation land acquisition programs. Art. III, §§ 12, 19, Fla. Const. Steve Crisafulli is sued

in his official capacity as Speaker of the Florida House of Representatives, a capacity in which he has a duty to ensure that appropriations conform to the requirements of the Florida Constitution.

25. The Florida Legislature is the legislative body of the State of Florida, and is invested with the legislative power of the State. Art. III, § 1, Fla. Const. The Legislature is tasked with appropriating money to fund state programs, including conservation land acquisition programs. Art III, §§ 12, 19, Fla. Const. The Legislature has a duty to appropriate funds in a manner which follows the requirements of the Florida Constitution.

26. Jeff Atwater is the Chief Financial Officer of Florida. The Chief Financial Officer has the power and duty to settle and approve accounts against the state, and to keep all state funds and securities. Art. IV, § 4(c), Fla. Const.

The Intent of the Voters That Adopted Amendment 1

27. The Florida Constitution requires a super-majority of 60% of the voters to approve proposed constitutional amendments. Art. XI, § 5(e), Fla. Const.

28. An extraordinary 75% of the electorate voted for Amendment 1.

29. This super-super-majority saw on the ballot only the Title and Summary of Amendment 1.

30. Although the voters could obtain the full text of Amendment 1, it was not on the ballot which included only the Ballot Title and Ballot Summary.

31. To be placed on the ballot, the Florida Supreme Court was required to determine that the Title and Summary were accurate summaries of the full text of Amendment 1 and the court did exactly that.

32. That Title and Summary are what the voters overwhelmingly adopted.

33. This court must look to the Title and Summary to determine the meaning of Amendment 1.

34. The Ballot Title reads: Water and Land Conservation - Dedicates funds to acquire and restore Florida conservation and recreation lands.

35. The Ballot Summary, which explains how the intent set forth in the Title is to be carried out, reads:

Funds the Land Acquisition Trust Fund to acquire, restore, improve, and manage conservation lands including wetlands and forests; fish and wildlife habitat; lands protecting water resources and drinking water sources, including the Everglades, and the water quality of rivers, lakes, and streams; beaches and shores; outdoor recreational lands; working farms and ranches; and historic or geologic sites, by dedicating 33 percent of net revenues from the existing excise tax on documents for 20 years.

36. The Title of Amendment 1 says the funds are for two purposes, acquisition of conservation and recreation lands and restoration of conservation and recreation lands.

37. While the latter of these two purposes was undoubtedly looking to the Everglades, there are many previously acquired lands, for example, the Babcock Ranch, where restoration for conservation and recreational purposes is very important.

38. The Summary states that the revenue stream created by Amendment 1 can be used to acquire, restore, improve, and manage conservation and recreation lands. It then enumerates a series of lands which may be conservation and recreation lands, then specifies the funding source of such acquisitions and restoration.

39. This language must be read in the context of the Ballot Title which describes the two allowable purposes for the revenue stream, acquisition and restoration.

40. The words “restore” and “improve” in the Ballot Summary authorize the funds to be used for conversion of acquired lands to conservation purposes (also a form of improvement) and enhancement of recreational purposes.

41. The word “manage” in the Ballot Summary authorizes the funds to be used for management required to acquire such lands, and to restore and/or improve such lands.

42. Those, and only those, management expenses are permissible under the specific terms of Amendment 1.

43. General management expenses or administrative expenses related to general management are not permissible; only the specified management expenses are covered.

44. Rather than carrying out its duty to honor and effectuate the intent of the voters in passing Amendment 1, the 2015 Florida Legislature diverted and used the dedicated Amendment 1 trust fund revenue as if it were general funds not subject to the restrictions the voters approved in Amendment 1.

45. Thus, tax revenue constitutionally dedicated to the acquisition and restoration of conservation and recreation lands was used:

- a. to pay for \$174,078,574.00 of salaries and overhead for personnel within the Florida Department of Agriculture and Consumer Services, the Department of Environmental Protection, the Fish and Wildlife Conservation Commission, and the Department of State;
- b. to pay for \$38,575,538 of sewage treatment plants and stormwater infrastructure;
- c. to pay for \$21,697,449.00 (\$5,000,000 of which was vetoed by the Governor) of the cost of implementing agricultural best management practices on non-conservation, privately owned lands;

d. to pay for \$5,000,000 of agricultural pollution reduction and water retention projects on non-conservation, privately owned lands;

e. to pay for \$1,222,158.00 of risk management insurance for the Department of Environmental Protection, the Department of Agriculture and Consumer Services, the Department of State and the Florida Fish and Wildlife Conservation Commission to ensure against damages from Civil Rights Act violations, state tort law claims, and workers' compensation claims;

f. to pay for \$838,570.00 of wildfire suppression equipment for the Department of Agriculture; and,

g. to pay for \$623,043.00 of salaries and overhead associated with executive leadership and administrative services to wildlife programs in the Florida Fish and Wildlife Conservation Commission;

46. These appropriations are unconstitutional.

The Legislature's Actions

47. On June 19th, 2015, the Florida Legislature passed an appropriations bill. The bill was signed into law by Governor Rick Scott on June 23rd, 2015. *See* Ch. 2015-232, Laws of Fla.

48. At the time the appropriations bill was passed, 33% of the net revenue stream created by the documentary stamp tax was estimated to equate to approximately \$740 million.

49. Amendment 1 places that revenue stream into the Land Acquisition Trust Fund for the dedicated purposes described in its Title and Summary.

50. One stated purpose of Amendment 1 is to create a dedicated revenue stream for the payment of debt service on bonds issued to purchase conservation and recreation lands pursuant to Article XI, § 11(e) of the Florida Constitution. *See* Art. X, § 28(b)(2), Fla. Const. That debt service totaled \$190 million this year and was properly paid out of revenues in the Land Acquisition Trust Fund. It included: \$151 million for debt service on bonds that financed conservation land acquisition (Appropriation No. 1571); \$26 million for debt service on Save Our Everglades bonds (Appropriation No. 1620); and \$13 million for debt service on bonds for Water Management District land acquisitions (Appropriation No. 1619).

51. After paying the debt service, \$550 million remained available in the Land Acquisition Trust Fund to carry out the purposes of Amendment 1.

52. Actual acquisition of land, one of the two principal purposes of Amendment 1, accounted for a mere \$50 million (less than 7% of the available revenue stream).

53. Florida's premier land buying program, Florida Forever, received only \$17,400,000 (Appropriation No. 1569A) comprised of \$15,156,206 from the Land Acquisition Trust Fund and \$2,243,794 from General Revenue.

54. That is exactly one-tenth of the \$174,000,000 for salaries and overhead the Legislature funded out of the Land Acquisition Trust Fund.

55. Funding for rural land protection easements and land conservation agreements totaled \$15 million (Appropriation No.1421A); and funding for Lake Kissimmee land acquisition totaled \$20 million (Appropriation No. 1618).

56. Funding for Everglades Restoration, clearly appropriate as one of the two principal purposes of Amendment 1, totaled \$58,887,820.00 (Appropriation No. 1621).

57. After vetoing over \$460 million of spending in the appropriations bill—including some \$220 million in appropriations from the General Revenue Fund and \$20,000,000 in appropriations from the Land Acquisition Trust Fund, Governor Scott signed the bill into law.

58. Of the approximately \$440 million remaining in Amendment 1’s dedicated revenue stream, nearly half (\$237,035,332) was patently misappropriated by the Legislature for purposes wholly outside the intent of the voters including:

a. Appropriation Nos. 1376, 1377, 1382, 1406, 1407, 1408, 1419, 1422, 1516, 1518, 1525, 1533, 1535, 1555, 1556, 1557, 1572, 1573, 1574, 1579, 1581, 1599, 1601, 1606, 1608, 1623, 1624, 1625, 1642, 1643, 1644, 1648, 1649, 1650, 1694, 1696, 1713, 1714, 1715, 1740, 1757, 1759, 1769, 1778 ,1780, 1794, 1795, 1796, 1818, 1820, 1843, 1845, 3056, 3081, 3082, 3083, 3092, 3113, 3114, 3115 totaling \$174,078,574.00 for salaries and overhead for personnel within the Florida Department of Agriculture and Consumer Services, the Department of Environmental Protection, the Fish and Wildlife Conservation Commission, and the Department of State;

b. Appropriation No. 1380 for \$21,697,449.00 to the Department of Agriculture (\$5,000,000 of which was vetoed by the Governor) for implementation of agricultural best management practices on non-conservation, privately owned lands;

c. Appropriation No. 1381A for \$5,000,000 to the Department of Agriculture for implementation of agricultural nutrient reduction and water retention projects on non-conservation, privately owned lands;

d. Appropriations Nos. 1379, 1420, 1564, 1578, 1614, 1635, 1705, 1721, 1749, 1788, 1808, 1827, 1852, 3089 totaling \$1,222,158.00 for risk management insurance for the

Department of Environmental Protection, the Department of Agriculture and Consumer Services, the Department of State and the Florida Fish and Wildlife Conservation Commission to cover, among other claims, liability for worker's compensation claims, state law tort claims and violations of the federal civil rights act;

e. Appropriation No. 1415 for \$838,570.00 for wildfire suppression equipment for the Department of Agriculture; and,

f. Appropriation Nos. 1744 and 1745 totaling \$623,043.00 to pay for executive leadership and administrative services to wildlife programs in the Florida Fish and Wildlife Conservation Commission.

59. Appropriation No. 1639 which funds "springs restoration" with \$38,575,538 from the Land Acquisition Trust Fund is constitutionally infirm to the extent it allows the Amendment 1 dedicated revenue stream to be used for building sewage treatment plants and stormwater treatment infrastructure.

COUNT I

DECLARATORY RELIEF AGAINST ANDY GARDINER, AS PRESIDENT OF THE FLORIDA SENATE; STEVE CRISAFULLI, AS SPEAKER OF THE FLORIDA HOUSE OF REPRESENTATIVES; AND THE FLORIDA LEGISLATURE APPROPRIATION OF FUNDS IN VIOLATION OF ART. X, § 28, FLA. CONST.

60. Paragraphs 2 through 59 are realleged and incorporated herein by reference.

61. Plaintiffs are taxpayers who assert a right to have documentary stamp tax revenues collected by the state and placed in the Land Acquisition Trust Fund pursuant to Article X, Section 28 of the Florida Constitution appropriated only for the purposes specified in Article X, Section 28 of the Florida Constitution.

62. The decision of Andy Gardner, as President of the Florida Senate; Steve Crisafulli, as Speaker of the Florida House of Representatives, and the 2015 Florida Legislature to appropriate monies from that trust fund for purposes other than those purposes specified in Article X, Section 28 of the Florida Constitution has cast Plaintiffs' right into doubt.

63. Pursuant to section 86.011, Florida Statutes, Plaintiffs are entitled to have this doubt removed.

64. As set forth *supra*, there is a bona fide, actual, present and practical need for a declaration from this court.

65. Without such declaration, the Florida Legislature will be free to continue to flout Amendment 1.

66. Therefore, Plaintiffs are entitled to a declaration that the appropriations listed in paragraphs 58(a-f) and 59 constitute impermissible uses of funds from the Land Acquisition Trust Fund and a declaration as to what uses are permissible under Amendment 1.

COUNT II
INJUNCTIVE RELIEF AGAINST JEFF ATWATER,
CHIEF FINANCIAL OFFICER

67. Paragraphs 2 through 59 are realleged and incorporated herein by reference.

68. The Plaintiffs are legally entitled to the relief they seek.

69. The Plaintiffs have no adequate remedy at law.

70. The Plaintiffs are being harmed irreparably by the State's misappropriation of Land Acquisition Trust Fund monies in violation of the clear requirements of Article X, Section 28 of Florida's Constitution.

71. As set forth *supra*, the public interest would be served by permanent injunctive relief under the circumstances.

72. The State's misappropriation of \$237,035,332 of funds from the Land Acquisition Trust Fund in violation of Amendment 1 is illegal, contrary to public policy, and wrongful with respect to the Plaintiffs' interests.

73. Transfer of the General Revenue surplus created by Governor Scott's vetoes, combined with other surplus general revenue, to the Land Acquisition Trust Fund will, in substantial part, remedy the Legislature's misappropriations and preserve the intent of the voters who overwhelmingly approved Amendment 1.

74. The purpose of the injunction is to give back to land acquisition and restoration the monies wrongfully appropriated without in any way whatsoever affecting any state expenditure. Under this remedy, no employee will lose their job, no contract will be unpaid, and no existing project will be cancelled.

75. For that reason, application of this remedy will not result in the Court's exercise of the appropriation power and will in no way disrupt the current operations of state government.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief against Speaker of the House Steve Crisafulli, President of the Senate Andy Gardiner, and the Florida Legislature:

- (1) a declaration that the appropriations listed in paragraphs 58(a-f) and 59 violate Article X, section 28 of the Florida Constitution;

(2) a declaration that money paid into the Land Acquisition Trust Fund by reason of Article X, section 28 of the Florida Constitution may not be substituted for General Revenue funds or other funds and may not be used for purposes other than those within the scope of Amendment 1; and,

(3) pursuant to section 86.061, Florida Statutes, such further supplemental relief as the Court may deem necessary and proper.

And, the following relief is requested against Chief Financial Officer, Jeff Atwater,

(4) an injunction requiring Jeff Atwater, as Chief Financial Officer of the State of Florida, to transfer \$237,035,332 of General Revenue surplus to the Land Acquisition Trust Fund to be reserved for uses permissible under Article X, section 28 of the Florida Constitution in order to remedy the Legislature's misappropriations.

Respectfully submitted this 28th day of August, 2015.

/s/David G. Guest

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