

**IN THE SUPREME COURT OF FLORIDA**

**FLORIDA DEFENDERS OF THE  
ENVIRONMENT, INC., et al.,**

Plaintiffs/Appellants,

**Case No. SC2024-0551**

L. T. Case No. 1D22-3463

L.T. Case No. 2018-CA-002682

v.

**THE FLORIDA LEGISLATURE, et al.,**

Defendants/Appellees,

\_\_\_\_\_ /

**STRICKEN**  
FLORIDA DEFENDERS OF THE ENVIRONMENT INC., *et. al.*,  
PETITIONERS JURISDICTIONAL BRIEF

On Petition for Review of a Decision of the District Court of Appeal, First  
District, State of Florida

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## STATEMENT OF THE CASE AND FACTS

This Court may review any decision of a District Court of Appeal “that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.” Art. V § 3(b)(3) Florida Constitution. This Court has discretionary conflict jurisdiction of this case pursuant to that provision.

Petitioners Florida Defenders of the Environment, Inc., *et. al.* (hereinafter FDE) respectfully petition this Court for discretionary review of a decision of the District Court, *Fla. Wildlife Fed'n, Inc. v. Fla. Legislature*, No. 1D2022-3142, 2024 WL 617637 (Fla. 1<sup>st</sup> DCA 2024) that conflicts with this Court’s decision in *Holly v. Auld*, 450 So.2d 217, 218 n. 1 (Fla.1984), holding that mootness does not avoid appellant review “when the questions raised are of great public importance or are likely to recur,” and also conflicts with *Kight v. Dugger*, 574 So. 2d 1066 (Fla. 1990), holding that mootness does end a case when the issue is one “capable of repetition, yet evading review.”

After this Court’s approval in *Advisory Op. to Att’y Gen. re Water & Land Conservation—Dedicates Funds to Acquire & Restore Fla. Conservation & Recreation Lands*, 123 So.3d 47 (Fla.2013), Amendment

One was submitted to the electorate under the ballot title, “**Dedicate Funds to Acquire and Restore Florida Conservation and Recreation Lands.**” The 2014 Florida voters’ “overwhelmingly approved” the measure and it “became section 28 of Article X of the Florida Constitution.” *Oliva v. Fla. Wildlife Fed'n, Inc.*, 281 So. 3d 531, 533 (Fla. 1<sup>st</sup> DCA 2019). (Bold added.)

Article X § 28 created a constitutional trust fund known as the Land Acquisition Trust Fund (hereinafter LATF) and requires designated documentary taxes be placed in the LATF to be expended “only for” purposes delineated in the amendment. FWE submitted that the only authorized LATF purposes are to acquire and to restore conservation and recreation lands. The State admitted that none of the challenged appropriations were expended to purchase new conservation lands<sup>1</sup> and the records suggests that LATF funds were for non-acquisition purposes such as managing existing state parks and forests, thus freeing up general revenues for purposes other than acquiring and restoring conservation lands. Almost half of the 20 year life of the Article X §28 LATF has expired

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<sup>1</sup>Initial Brief of Legislative Parties in District Court of Appeal, First District, pp. 9-10.

and much of the funds have been appropriated and spent for unauthorized purposes.

The Florida legislature enacted Ch. 2015-232, Laws of Florida to appropriate LATF funds for a wide variety of purposes that *were not* for acquiring and restoring conservation and recreation lands. Florida Wildlife Federation, Inc. and other named plaintiffs (hereinafter referred to as FWF) sued the Legislative Parties to challenge a large number of line item appropriations in Ch. 2015-232. Thereafter, FDE sued the Department of Environmental Protection, the Department of Agriculture and Consumer Services, the Department of State and the Florida Fish and Wildlife Conservation Commission seeking an order that a number of the Ch. 2015-232 line item appropriations violated Article III §§6 and 12 Florida Constitution. FDE requested *inter alia*:

..... an order holding that each and every one of the specific appropriations identified in Exhibit 1 by the item numbers from Chapter 2015-232, Laws of Florida were enacted in violation of Article III §6 and Article III §12 Florida Constitution, directing Defendant Detzner to expunge each and every one of them from the state records of the State of Florida, granting other appropriate relief to effectuate the Court's orders, and awarding plaintiffs costs of this litigation.....

FDE amended its complaint to seek expungement of a number of the appropriations in the 2016 general appropriations act (Ch. 2016-66, Laws

of Florida) on the same grounds. Thereafter, the trial court permitted the Legislative Parties to intervene in FDE's action and consolidated the FDE and FWF actions.

FDE moved for summary judgment on the grounds that all of the challenged appropriations were unconstitutional because none were to acquire and restore, etc., new conservation and recreation lands. LATF funds. The trial court granted FDE's motion and held that the plain wording of Article X §28 limited expenditure of LATF funds to acquiring new conservation and recreation lands and restoring, etc., lands so-acquired since Article X § 28 became effective. On appeal, the District Court held that Article X § 28 imposed no such a restriction on the Legislature's authority to expend LATF funds, reversed, and stated:

By our ruling we do not speak to the legality of the appropriations since enactment of Article X, section 28, a question which remains pending. We hold only that LATF revenue is not restricted to use on land purchased by the State after 2015. Accordingly, the final summary is reversed, and the cause is remanded to the circuit court for further proceedings.

*Oliva v. Fla. Wildlife Fed'n, Inc.*, 281 So. 3d 531, 539 (Fla. 1<sup>st</sup> DCA 2019).

This Court denied FDE's and FWF's petitions for discretionary review, but gave no reasons. *Fla. Wildlife Fed'n, Inc. v. Oliva*, No. SC19-1935, 2020 WL 3525953 (Fla. 2020). This Court may have preferred the lower

courts to make an initial interpretation of Article X §28 upon the remand of the district court.

The trial court did not provide a revised interpretation of Article X §28, but, instead, dismissed the cases as moot on the grounds that the fiscal year had expired and the challenged appropriations expended. *Fla. Wildlife Fed'n, Inc. v. Fla. Legislature*. FDE and FWF appealed to the District Court, which affirmed the “mootness” decision. Even if the cases were moot (which FDE and FWF denied), the district court’s failure to review the trial court’s decision conflicts with this Court’s decisions “that mootness does not destroy an appellate court’s jurisdiction, however, when the questions raised are of great public or are likely to recur,” *Holly v. Auld*, and, when the questions are “capable of repetition, yet evading review.” *Kight v. Dugger*.

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### **SUMMARY OF ARGUMENT**

This case raises questions of “great public importance or are likely to recur,” *Holly v. Auld*, and questions that are “capable of repetition, yet evading review.” *Kight v. Dugger*. The issue for review is to determine whether the district court’s opinion below, which declined on grounds of “mootness” to permit litigation of the merits of this case, conflicts with *Holly*

*v. Auld and Kight v. Dugger*. The remedy requested is to remand the case to the District Court for further proceedings.

## ARGUMENT

The district court's decision to review the appeal on "mootness" grounds conflicts with this Court's decisions in *Holly v. Auld and Kight v. Dugger*, and many others. Moreover, unlike *Dep't of Admin. v. Horne*, 269 So. 2d 659, 663 (Fla. 1972), cited by the district court, FDE's case is not one wherein the "*substantive matters affected*" have been resolved. In *Horne* involved no unresolved demand for expungement of statutes and no unresolved rules of constitutional interpretation. In FDE's case no less than two substantive issues remain undecided:

1. Expungement of unconstitutional statutes from the official records and
2. A binding interpretation of the limits Article X §28 places on the legislature's authority to appropriate LATF funds.

### THIS IS A CASE OF GREAT PUBLIC IMPORTANCE

Article X § 28. Land Acquisition Trust Fund provides:

(a) Effective on July 1 of the year following passage of this amendment by the voters, and for a period of 20 years after that effective date, the Land Acquisition Trust Fund shall receive no less than 33 percent of net revenues derived from the existing excise tax on documents, as defined in the statutes in effect on January 1, 2012, as amended from time to time, or any successor or replacement tax, after the Department of

Revenue first deducts a service charge to pay the costs of the collection and enforcement of the excise tax on documents.

(b) Funds in the Land Acquisition Trust Fund shall be expended only for the following purposes:

(1) As provided by law, to finance or refinance: the acquisition and improvement of land, water areas, and related property interests, including conservation easements, and resources for conservation lands including wetlands, forests, and fish and wildlife habitat; wildlife management areas; lands that protect water resources and drinking water sources, including lands protecting the water quality and quantity of rivers, lakes, streams, springsheds, and lands providing recharge for groundwater and aquifer systems; lands in the Everglades Agricultural Area and the Everglades Protection Area, as defined in Article II, Section 7(b); beaches and shores; outdoor recreation lands, including recreational trails, parks, and urban open space; rural landscapes; working farms and ranches; historic or geologic sites; together with management, restoration of natural systems, and the enhancement of public access or recreational enjoyment of conservation lands.

(2) To pay the debt service on bonds issued pursuant to Article VII, Section 11(e).

(c) The moneys deposited into the Land Acquisition Trust Fund, as defined by the statutes in effect on January 1, 2012, shall not be or become commingled with the general revenue fund of the state.

Unrestricted by any court ruling, the legislature continues to use the LATF funds for unauthorized purposes. The practical effect is to substitute general revenue funds with LATF monies to fund existing operations, such as managing state parks and other unauthorized purposes. In the meantime, the need to acquire and preserve Florida's remaining conservation lands has become more urgent. Public population records show that from 2014, when Amendment One was approved, until now the

state's population has increased more than 10%, now approaching or exceeding 23 million. In the meantime no new lands are being created and the available greenspace per person continues to shrink. With global warning the availability of conservation lands may be dwindling.

Few or no public need is greater than to preserve conservation lands for the people of Florida and to avoid damage to the eco-tourism industry. The 1996 electorate adopted Article II §7 Florida Constitution to protect the natural resources of the state. It provides in part:

SECTION 7. Natural resources and scenic beauty.—

(a) It shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution, and of excessive and unnecessary noise and for the conservation and protection of natural resources.

Article X §28 was to provide funds to assist in implementing Article II §7.

Almost one-half of the life of LATF has elapsed and the public interest urgently needs the remaining funds be spent as the voters expected.

FDE's case is plainly one of great public importance and is within the Court's jurisdiction pursuant to *Holly v. Auld* and otherwise. *Tau Alpha Holding Corp. v. Bd. of Adjustments of City of Gainesville*, 171 So. 819 (1937) stated:

The rule is settled that although questions raised in a litigated case may

before their adjudication in due course become moot in so far as they affect that case, the court is warranted in adjudicating them if they are of great public import and the real merits of the controversy are unsettled. *State ex rel. Dakota Trust Co. v. Stutsman*, 24 N.D. 68, 139 N.W. 83, Ann.Cas.1914D, 776, and cases there cited. *Id.*, at 172 So. 820.

In *Bowden v. Carter*, 65 So. 2d 871(Fla. 1953), a “right to vote” case, the specific dispute was resolved during the course of the litigation, giving rise to the mootness issue. This Court retained jurisdiction, stating:

It is suggested by petitioner-appellee that inasmuch as he has now changed his registered party affiliation to Republican, the operation of section 101.111 does not now operate to deprive him of his right to vote either in his party primary elections or in general elections, wherefore all questions raised on this appeal are moot as to him. We think, however, that the declaration by the lower court of the invalidity of portions of section 101.111, as applied in primary elections is of sufficient public interest that this court may review it. *Pace v. King*, Fla., 38 So.2d 823.

*Id.*, at 65 So.2d 873.

*Ervin v. Cap. Wkly. Post, Inc.*, 97 So. 2d 464(Fla. 1957) reaffirmed:

We reiterate that an appellate court does not lose jurisdiction of a cause even though the matter in controversy has become moot as to one or more of the litigants in cases involving wide public interest or where such matters involve the duties and authority of public officials in the administration of the law and are of general interest to the people. *The future administration of the election law by public officials requires the hearing of the merits of the appeal.*

*Id.*, at 97 So.2d 466 (Italics added.) This case likewise requires the merits be decided to determine the *future administration* of the LATF.

THIS IS A CASE CAPABLE OF REPETITION, YET EVADING REVIEW.

This protracted litigation proves the likelihood to end litigation challenging unauthorized LATF line items within a fiscal year is small. Defendants found ways to delay the litigation in this case and there is no reason to expect them to act differently in the futures. Accordingly, this case is independently within this Court's jurisdiction under the precedent of *Kight v. Dugger*.

### CONCLUSION

A binding constitutional construction of Article X §28 is unlikely to arise within this Court's jurisdiction other than in this case. Because the need to acquire and protect conservation and recreation is great<sup>2</sup> and LATF funds are fast dwindling, the need for a binding construction is compelling. Accordingly, this Court should exercise its conflict jurisdiction and remand to address the undecided constitutional question.

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<sup>2</sup>This is the acknowledged public policy of the state: "(1) It is the policy of the state that the citizens of this state shall be assured public ownership of natural areas for purposes of maintaining this state's unique natural resources; protecting air, land, and water quality; promoting water resource development to meet the needs of natural systems and citizens of this state; promoting restoration activities on public lands; and providing lands for natural resource-based recreation."  
§ 259.032 Fla. Stat.

## CERTIFICATE AS TO WORD COUNT, PAGES, AND FONT

The undersigned lawyer herewith certifies that this brief is prepared in Arial 14 Font and contains fewer than 2500 words and not more than 10 pages.

## CERTIFICATE OF SERVICE

I certify that a copy of this brief was emailed through the efilng system or otherwise to the parties below through their counsel on this 24<sup>th</sup> day of April, 2024.

Respectfully submitted,

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