IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT, IN AND FOR BREVARD COUNTY, FLORIDA

BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida and the NORTH BREVARD DEVELOPMENT DISTRICT, a dependent special district,

Plaintiffs,

vs.

THE STATE OF FLORIDA, and the Taxpayers, Property Owners and Citizens of Brevard County, Florida, including non-residents owning property or subject to taxation therein, and all others having or claiming any right, title or interest in property to be affected by the indebtedness herein described, or to be affected thereby,

Defendants.
_____/

CASE NO.: 05-2018-CA-018298-XXXX-XX

VALIDATION OF THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED $8,100,000 OF THE BREVARD COUNTY, FLORIDA NON-AD VALOREM REVENUE NOTE , SERIES 2018

ORDER DENYING PLAINTIFFS' COMPLAINT FOR BOND VALIDATION

THIS CAUSE came before the Court for evidentiary hearing on July 30 and 31, 2018, following the Court's determination at the hearing on May 23, 2018, that Intervenor, SCOTT ELLIS, in his official capacity as Brevard County Clerk of the Circuit Court and Comptroller (the "**Clerk**"), had shown cause why he should be allowed to intervene in this suit filed by Plaintiffs, BREVARD COUNTY, FLORIDA (the "**County**"), and NORTH BREVARD DEVELOPMENT DISTRICT (the "**District**") (collectively "**Plaintiffs**"). Having considered the evidence presented during the evidentiary hearing, the applicable constitutional, statutory, and Brevard County Charter provisions and case law, in addition to the oral and written arguments of counsel, this Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

The Commission Approves an $8 Million Grant from the District to Blue Origin

In 2011, the Brevard County Board of County Commissioners (the "**Commission**") created the District for the purpose of implementing an economic development plan within the North Brevard Economic Development Zone through Ordinance No. 2011-18. (Pls.' Ex. 5). On May 26, 2015, the Commission approved an $8 million economic incentive grant (the "**Grant**") from the District for an economic development project known as Project Panther with the "stated goal of creating 330 new, permanent jobs" within the County. (Clerk's Ex. 27 at 1).[1] Project Panther was later identified as the space program of Blue Origin, LLC ("**Blue Origin**"), a privately-held aerospace company.

On June 25, 2015, then-County Attorney Scott Knox circulated an interoffice memorandum explaining the purpose of the Grant was not for a capital project, but instead was for the purpose of funding the Grant. (Clerk's Ex. 72 at 8). On March 1, 2016, the District and Blue Origin signed the North Brevard Development District Economic Incentive Agreement (the "**Incentive Agreement**"), formally documenting the $8 million Grant for Blue Origin. (Pls.' Ex. 1). Under the Incentive Agreement, the District agreed to provide the Grant to Blue Origin to induce the company to locate its facility and create jobs within the County. (*Id.* at 3). The Incentive Agreement permitted the District to seek financing to pay the Grant in a lump sum. (*Id.* at 4). However, if the District could not obtain financing or if the financing terms were unfavorable, the District could pay the Grant in annual payments over a six-year period with no interest. (*Id.*).

[1] All references to pages of exhibits presented by Plaintiffs and the Clerk shall be to the physical page number of the exhibit upon which the information appears as opposed to the printed page number, as a number of exhibits have conflicting page numbers or are portions of larger documents.

The County Seeks to Issue Bonds to Fund the District's $8 Million Grant to Blue Origin

On December 19, 2017, the Commission adopted the Interlocal Agreement Between the North Brevard Economic Development District and Brevard County Relating to the Payment of Debt Service on Financing of Blue Origin Grant Agreement (the "**Funding Agreement**") and agreed to seek to borrow- and issue a bond to fund the District's payment of the Grant. (Clerk's Ex. 28 at 4). The same day, the County adopted Resolution No. 17-257 (the "**Note Resolution**"), authorizing the issuance of the Brevard County, Florida Non-Ad Valorem Revenue Note, Series 2018 (the "**Series 2018 Note**") to fund the Grant.[2] (Clerk's Ex. 29). Mr. Knox explained that the District was attempting to satisfy its good faith obligation to pursue financing by seeking bond validation, as Mr. Knox and bond counsel were hesitant to provide an opinion on their own that the proposed borrowing was legal. (Clerk's Ex. 46 at 2-3). Plaintiffs needed to determine whether it was "appropriate to borrow, and legal to borrow funds for the purposes of giving a grant to the Blue Origin organization." (*Id.* at 2).

The Bond Validation Case and Subsequent Evidentiary Hearing

On March 2, 2018, Plaintiffs filed their Complaint for Validation, seeking to validate all proceedings in connection with the Series 2018 Note and the Funding Agreement. On April 18, 2018, the Clerk intervened and challenged the County's request for validation.[3] Thereafter, the Court conducted an evidentiary hearing on Plaintiffs' complaint on July 30 and 31, 2018, in accordance with chapter 75, Florida Statutes.

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[2] Bond counsel stated that the findings of fact in the proposed resolution were "intended to buttress the paramount public purpose." (Clerk's Ex. 87 at 1).

[3] The Clerk filed a motion to dismiss regarding Plaintiffs' complaint which this Court denied.

At the evidentiary hearing, Plaintiffs presented testimony from four witnesses: Troy Post, the District's Executive Director; Jay Glover, the County's financial advisor; Scott Henderson, Blue Origin's Vice President of Test and Flight Operations; and Henry H. Fishkind, Ph.D., an economist. Troy Post, the District's Executive Director, testified concerning the nature of the Grant. Specifically, he agreed that the District budget presented to and approved by the Commission showed all grants and aid, including the Grant to Blue Origin, were classified as operating expenditures; that neither Plaintiff will have any ownership in the Blue Origin facility; and that he did not believe the Commission considered section 5.3.1. of the Brevard County Charter (the "**Charter**"), which prohibits issuance of debt for operating expenditures, in approving the proposed borrowing. (Tr. 96-99; 103-04; 128); (Pls'. Ex. 16 at 16-17). Mr. Post testified that Plaintiffs alone must repay the $8 million bond, not Blue Origin, under the proposed borrowing. (Tr. 128-29).

Jay Glover, the County's financial advisor, provided testimony regarding the nature of the financing deal and the potential principal and interest payments to be made by the County if the bonds were issued. (Tr. 228-230). Germane to the three prongs this Court must consider, Mr. Glover testified that in his 15 years as a financial advisor for numerous cities and counties, in his experience, no Florida local government has ever borrowed to fund an economic incentive grant. (Tr. 219-20; 227).

Scott Henderson, Blue Origin's Vice President of Test and Flight Operations, testified that Blue Origin owns and has the exclusive right to use of the Blue Origin manufacturing facility for 47 years through 2065; that Blue Origin has no rent obligation under its lease with

Space Florida[4]; that Blue Origin is a for-profit company; and that Blue Origin is not publicly traded and does not publicly disclose its finances. (Tr. 292-93; 297-98). He also testified that he and Mr. Knox have always understood that "[t]he only benefit the County will derive from the success of the Project is the increase in labor and employment, which will increase the tax base and grow the economy." (Tr. 296-97); (Clerk's Ex. 72 at 8).

Henry H. Fishkind, Ph.D., an economist, offered two opinions. First, Dr. Fishkind testified that he considered, from an economic standpoint, the Grant to Blue Origin was a capital expense rather than an operating expense.[5] (Tr. 185-88). Dr. Fishkind admitted having no expertise in general or governmental accounting, the State of Florida's Uniform Accounting System Manual (the "**UASM**"), or the governmental accounting standards issued by the Governmental Accounting Standards Bureau ("**GASB**") or the National Center on Governmental Accounting ("**NCGA**"). (Tr. 164-66). As a result, Dr. Fishkind admitted he could not render any accounting opinions. (Tr. 166). Despite his admission, Dr. Fishkind spent four hours "researching accounting issue[s]" in formulating his "economic" opinion that the payment of the Grant was a capital expense. (Tr. 167-68). He testified that "accounting is very relevant," but that he didn't think "accounting principles are determinative" of whether the Grant should be classified as a capital expenditure for "economic" purposes. (Tr. 202). Dr. Fishkind did testify,

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[4] Space Florida, an independent special district of the State of Florida, leases the land upon which Blue Origin's buildings are located from NASA. (Pls.' Ex. 18).

[5] This opinion fails because Dr. Fishkind is not qualified to opine on section 5.3.1. of the Charter because he is not an accounting expert. *See Crane Co. v. DeLisle*, 206 So. 3d 94, 101 (Fla. 4th DCA 2016) ("To properly perform its gatekeeping function, the court must first determine that the expert is 'qualified on the matter about which he [or she] intends to testify.'" (quoting *Hughes v. Kia Motors Corp.*, 766 F.3d 1317, 1329 (11th Cir. 2014))). Section 5.3.1. uses technical, accounting terminology—including "instruments of indebtedness," "current operations," "current expenses," "directly allocable," and "capital projects"—which requires an accounting opinion.

however, that it is possible to have different definitions of capital versus operating expenditures—one based in economics and another in accounting—and conceded that from an accounting standpoint, the Grant is an operational expenditure.[6] (Tr. 189-89; 197-98). When asked to qualify his "economic" viewpoint, Dr. Fishkind could not cite any definitive economic standards, principles, or published authority beyond general "microeconomic principles." (Tr. 197). The Court finds accounting standards, particularly governmental accounting standards, determine proper classification of the Grant as a capital or operating expense in this case.[7] While not discounting Dr. Fishkind's expertise in other areas, on his own admission he does not possess expertise to offer accounting opinions necessary for the determination of this validation suit. As a result, the Court has given very little weight to his opinion on this topic.

Dr. Fishkind also testified that the proposed bond issuance serves a paramount public purpose.[8] (Tr. 179-80). He testified that an economist must do three things to formulate a paramount public purpose opinion: (1) use economic expertise to conduct a valid economic impact study; (2) verify that the purposes stated in the documents concerning the proposed grant and borrowing correspond to the results projected in the economic impact study; and (3) use simple arithmetic to compare the size of the grant with the projected results of the economic impact study to verify that the size of the grant pales in comparison to the amount of the

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[6] Dr. Fishkind specifically testified: "That's how [the Grant is] classified for accounting purposes, but it does not transmute a capital expenditure into an operating expense from an economic prospective [sic]."

[7] *See* § 218.33, Fla. Stat. ("Each local governmental entity shall follow uniform accounting practices and procedures as promulgated by rule of the department [of Financial Services] to assure the use of proper accounting and fiscal management by such units. Such rules shall include a uniform classification of accounts.").

[8] This opinion is fraught because Dr. Fishkind, as Plaintiffs' expert, "is not permitted to render an opinion that applies a legal standard to a set of facts." *Estate of Murray* ex rel. *Murray v. Delta Health Grp., Inc.*, 30 So. 3d 576, 578 (Fla. 2d DCA 2010).

projected economic benefit. (Tr. 205-08). Despite indicating he conducted an independent economic impact study regarding the Grant, Dr. Fishkind did not produce such a study. (Tr. 194-96). Likewise, he did not produce any documents reflecting any work or calculations validating the projections of the two economic impact studies commissioned by Plaintiffs. (*Id.*). He generally agreed that anyone capable of reading could read the bond documents and the results of an economic impact study, (Tr. 206), but cautioned that one must have "special judgment" to determine whether a project serves a paramount public purpose. (*Id.*). The Court has given very little weight to Dr. Fishkind's paramount public purpose opinion because he could provide no independent documentation to support his position and the opinion requires the application of a legal standard to a set of facts. *Accord Delta Health Grp., Inc.*, 30 So. 3d at 578.

The Clerk presented testimony from two witnesses: Jill Hayes, the County's Budget Director; and Daniel J. O'Keefe, CPA. Ms. Hayes testified concerning the County's budgeting records and policies, and how the County accounts for grants as opposed to capital projects. She testified that the County must own or control a facility for the project to be considered a capital project of the County, and cannot classify as capital something it does not own. (Tr. 366-67; 372-73); (Clerk's Ex. 32). She testified that the Blue Origin facility is not a capital project because the County does not own or control the facility. (Tr. 365; 379-81). She testified that the County has budgeted for the Grant to Blue Origin as an operating expenditure in the County's budget for 2017-2018. (Tr. 364-65). She also testified the County had never borrowed to fund grants during the 16 years Ms. Hayes has worked for the County. (Tr. 372-73; 382-84). She also testified that she has always understood that the County may not borrow money except to finance capital projects owned or controlled by the County, or to re-finance existing debt. (Tr. 382-84).

Daniel J. O'Keefe, CPA, testified as an expert witness for the Clerk. He testified that Florida governments, including Plaintiffs, are required to abide by the accounting requirements outlined in the Florida UASM. (Tr. 406-07). He testified that the Grant to Blue Origin is not a capital expense, but rather an operating expense which may not be funded by debt. (Tr. 411-12; 415-16; 418-420; 421-25). He testified that the GASB in NCGA Statement 1 (adopted as GASB Statement 1) effective June 30, 1980, recognizes only three types of governmental expenditures at the "character" level: "'Current Expenditures,' which benefit the current fiscal period; 'Capital Outlays,' which are presumed to benefit both the present and future fiscal period; and 'Debt Service,' which presumably benefits prior fiscal periods as well as current and future periods." (Tr. 407-411); (Clerk's Ex. 49 ¶ 115). He testified that grants and aid to private organizations, such as that to Blue Origin, are classified as "current expenditures" as used in NCGA Statement 1/GASB Statement 1 and section 5.3.1. of the Charter. (Tr. 420-21). He testified that section 5.3.1. of the Charter prohibits borrowing to fund operating expenses or current expenditures, and that the County cannot borrow except to fund capital projects owned or controlled by the County, or to re-finance debt. (Tr. 423-25).

The Court gives great weight to Mr. O'Keefe's opinion concerning how Plaintiffs must budget for and classify grants and aid as operational expenditures as he is an expert in the field of governmental accounting with 40 years' experience in the field. Further, the Court gives great weight to Mr. O'Keefe's opinion on the definition and use of the words and phrases "instruments of indebtedness," "current operations," "current expenses," "directly allocable," and "capital

projects" as they exist in section 5.3.1. of the Charter as they are accounting terms governed by generally accepted accounting principles.[9] (Clerk's Ex. 49 ¶ 115).

CONCLUSIONS OF LAW

Legal Considerations for Bond Validation

Here, Plaintiffs had the burden of proving entitlement to validation by the more persuasive and convincing force and effect of the evidence. Validation depends on: "(1) whether the public body has authority to issue bonds; (2) whether the purpose of the obligation is legal; and (3) whether the bond issuance complies with the requirements of law." *Donovan v. Okaloosa County*, 82 So. 3d 801, 805 (Fla. 2012). All parties agreed that in order to satisfy the first prong, Plaintiffs had to prove that they had authority under Florida law to issue the proposed bonds. All parties agreed that in order to satisfy the second prong, Plaintiffs had to prove that the proposed bond issuance serves a paramount public purpose. And, lastly, all parties agreed that in order to satisfy the third prong, Plaintiffs had to prove that the proposed bond issuance complies with all applicable Florida law (including the Florida Constitution, general law, and the Charter). For the reasons provided herein, the Court finds Plaintiffs have not met their burden on all three prongs.

First Prong of Bond Validation

The Court finds that Plaintiffs failed to demonstrate they had the legal authority to issue the proposed bonds. Despite Plaintiffs' argument that section 125.045(3), Florida Statutes, authorizes them to issue the proposed bonds, the Court finds this argument without merit. Section 125.045(3) authorizes "issuing bonds to finance or refinance the cost of capital projects for industrial or manufacturing plants" and, separately, "making grants to private enterprises for the expansion of businesses existing in the community or the attraction of new business to the

[9] The County has issued a policy requiring the County to adhere to "accounting, reporting and control practices in conformance with the Uniform Accounting System of the State of Florida and Generally Accepted Accounting Principles (GAAP)." (Clerk's Ex. 41 at 4).

community." A plain reading of the statute does not, as Plaintiffs contend, authorize issuing bonds to make grants to private enterprises.[10] Plaintiffs do not contend they are issuing bonds to finance a capital project for an industrial or manufacturing facility. To the contrary, they argue they are issuing bonds to finance the Grant, and ask this Court to find the Grant is a capital expense. The Court finds the award to Blue Origin is the "making [of a] grant" to Blue Origin, and not the "finance or refinance" of a capital project of Plaintiffs.[11] Therefore, Plaintiffs' argument that section 125.045(3) authorizes Plaintiffs to issue the proposed bonds to fund the Grant fails. The Court notes that this case is distinguishable from cases cited by Plaintiffs.[12] In those cases, determination of validity of the bonds hinged on determining whether or not the projects contemplated or the funding sources identified were legally permissible. None of the cases involved an economic incentive grant; all involved capital projects; and all of the projects were funded by statutorily-cognizable mechanisms. Such is not the case in this validation, and Plaintiffs have failed to provide an authority which supports their position.

The Court also rejects the Plaintiffs' argument that home rule power authorizes issuance

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[10] "The rules of statutory construction are applicable to the interpretation of municipal charters." *Martinez v. Hernandez*, 227 So. 3d 1257, 1259 (Fla. 3d DCA 2017) (citing *GTC, Inc. v. Edgar*, 967 So. 2d 781, 785 (Fla. 2007) ("[W]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.")).

[11] "The agreement [between Blue Origin and Plaintiffs] is a statutorily authorized grant for economic development involving payment of $8,000,000 to the company..." (Clerk's Ex. 72 at 8).

[12] *See, e.g., Fla. Bankers Ass'n v. Fla. Dev. Fin. Corp.*, 176 So. 3d 1258 (Fla. 2015); *State v. Osceola County*, 752 So. 2d 530 (Fla. 1999); *Poe v. Hillsborough County*, 695 So. 2d 672 (Fla. 1997); *Taylor v. Lee County*, 498 So. 2d 424 (Fla. 1986); *State v. Osceola County Indus. Dev. Auth.*, 424 So. 2d 739 (Fla. 1982); *State v. Leon County*, 400 So. 2d. 949 (Fla. 1981); *Wald v. Sarasota County Health Facilities Auth.*, 360 So. 2d 763 (Fla. 1978); *State v. Jacksonville Port Auth.*, 305 So. 2d 166 (Fla. 1974).

of the proposed bond. A charter county's home rule power is limited to the extent it does not conflict with general law or the Constitution. Art. VIII, § 1(g), Fla. Const.; § 125.01(1), Fla. Stat.; *Angelo's Aggregate Materials, Ltd. v. Pasco County*, 118 So. 3d 971, 975 & n.7 (Fla. 2d DCA 2013). Here, the Constitution and general law prohibit counties from issuing bonds to fund operating expenses, such as economic development grants. *See, e.g.*, Art. VII, § 1(d), Fla. Const. ("Provision shall be made by law for raising sufficient revenue to defray the expenses of the state for each fiscal period."); § 129.01(2)(b), Fla. Stat. ("The budget must be balanced, so that the total of the estimated receipts available from taxation and other sources, including balances brought forward from prior fiscal years, equals the total of appropriations for expenditures and reserves."); *see also County of Palm Beach v. State*, 342 So. 2d 56, 57–58 (Fla. 1976) ("Article VII, Section 12 of the Florida Constitution, limits the power of counties to issue bonds to the two purposes of financing or refinancing capital projects, and to refund outstanding bonds at a lower interest cost. Bonds cannot be issued for the purpose of non-capital expenditures, such as payment of daily maintenance expenses."). Therefore, Plaintiffs' argument that home rule power authorizes Plaintiffs to issue the proposed bonds fails as their argument is in conflict with general law and the Constitution.

Second Prong of Bond Validation

The Court finds that Plaintiffs cannot meet the second prong of validation. Plaintiffs contend they must satisfy a paramount public purpose. (Tr. 20-21; 326-27); (Clerk's Ex. 56 at 2-3).[13] The Florida Supreme Court stated in *Donovan*:

[13] In an October 31, 2017 e-mail, the County's bond counsel acknowledged the County would be "lending its credit" to aid Blue Origin and the Grant would have to satisfy the paramount public purpose test. (Clerk's Ex. 56 at 2-3). *See Jackson-Shaw Co. v. Jacksonville Aviation Auth.*, 8 So.

> Where only a public purpose is required, however, 'it is immaterial that the primary beneficiary of a project be a private party, if the public interest, even though indirect, is present and sufficiently strong.' *But, if the private benefits are the paramount purpose of a project, the bonds cannot be validated under the constitution even if there is some public benefit.*

82 So. 3d at 810 (citing *State v. Housing Finance Authority of Polk County*, 376 So. 2d 1158, 1160 (Fla. 1979) and *Orange County Indus. Development Authority v. State*, 427 So. 2d 174, 179 (Fla. 1983)) (emphasis added). The Court finds that the paramount purpose of the proposed bond issuance is "a paramount private purpose." *See Donovan*, 427 So. 2d at 179.

The Florida Supreme Court has denied bond validation where the paramount purpose of bonds was to finance a private enterprise for private profit, which would be under the exclusive possession and control of a private entity. *See, e.g.*, *Orange County*, 427 So. 2d at 179 (denying bond validation where benefits to private party were paramount purpose of the project); *State v. Jacksonville Port Auth.*, 204 So. 2d 881, 885 & n.9 (denying bond validation where paramount purpose of bonds was to "lend the credit of the county to a private corporation to finance a private enterprise for private profit which [would] be under the exclusive control and in the exclusive possession of such enterprise for more than twenty-five years"). Here, the paramount purpose of the bonds is to finance an $8 million Grant to Blue Origin. The facility will be in the exclusive private possession and control of Blue Origin; every dollar of the $8 million Grant will exclusively benefit Blue Origin; the County will not have any ownership in or control of the facility. The only benefit to the County will be an increase in labor, and "an alleged advancement of the general welfare of the people" and the economy. *Orange County*, 427 So. 2d at 179.

3d 1076, 1095 (Fla. 2008) (As used in article VII, section 10, "credit" means "the imposition of some new financial liability upon the State or a political subdivision which in effect results in the creation of a State or political subdivision debt for the benefit of private enterprises.").

Third Prong of Bond Validation

Lastly, the Court finds that Plaintiffs failed to demonstrate that the proposed bond issuance complies with the requirements of law. Beyond the discussion of the legal authorities regarding the first two prongs, *supra*, the Court finds that the proposed bond issuance violates section 5.3.1. of the Charter. Section 5.3.1. provides, in part: "No proceeds of instruments of indebtedness shall be issued to finance current operations of County Government, except that part of current expenses directly allocable to capital projects." (Pls.' Ex. 16 at 16-17). Section 5.3.1. uses technical, accounting terminology, including "instruments of indebtedness," "current operations," "current expenses," "directly allocable," and "capital projects."

Plaintiffs argued in their Supplemental Memorandum of Law that the words used in Section 5.3.1. should be interpreted according to their natural, usual, plain, and ordinary meaning. (Doc. 46 at 5). Plaintiffs argued that the Court should interpret section 5.3.1 by combining separate definitions of two words, "operations" and "current," in *Merriam Webster's Dictionary and Thesaurus* (2014) at pp. 763 and 260. But *Merriam Webster's* does not define the plural word, "operations," or the compound term, "current operations." *Merriam Webster's* instead defines only the singular word, "operation," as "a doing or performing of practical work," or "the method or manner of functioning." And, the plurals of *Merriam Webster's* alternate definitions of "operation," *i.e.*, "multiple acts of doing or performing practical work," or "methods or manners of functioning," do not capture the meaning of "current operations" because "current operations," like the other technical terms used in Section 5.3.1., "instruments of indebtedness," "current expenses," "directly allocable," and "capital projects," are compound, accounting terms used and defined in accounting.

The GASB in NCGA Statement 1/GASB Statement 1, effective June 30, 1980, has classified expenditures at the "character" level as "'Current Expenditures,' which benefit the current fiscal period; 'Capital Outlays,' which are presumed to benefit both the present and future fiscal period; and 'Debt Service,' which presumably benefits prior fiscal periods as well as current and future periods." (Clerk's Ex. 49 ¶ 115). The State of Florida has adopted these three "character" level classifications of expenditures. (Tr. 407-11); (Clerk's Ex. 38 at 107); (Pls.' Ex. 19 at 105). Plaintiffs are required to follow the State's "uniform accounting practices and procedures"; Plaintiffs are not free to deviate from what the State has adopted. (Tr. 367-68); §218.33(2), Fla. Stat. Congruent with the State's "uniform accounting practices and procedures," Plaintiffs have a history of consistently considering, budgeting, and reporting grants and aid for the District as "operating expenditures." (Clerk's Exs. 2-6; 16 & 18). It is therefore incongruent with Florida law to classify the Blue Origin Grant as anything other than a "current expenditure" under the body of accounting guidance introduced as evidence and the testimony of Mr. O'Keefe. Section 5.3.1. of the Charter prohibits the issuance of the instant bonds, as do the balanced budget provisions of the Florida Constitution and Florida Statutes.[14]

ACCORDINGLY, based upon the above findings of fact and conclusions of law, it is hereby **ORDERED AND ADJUGED** that the Complaint for Validation filed by Plaintiffs,

[14] *See* art. VII, § 1(d), Fla. Const. ("Provision shall be made by law for raising sufficient revenue to defray the expenses of the state for each fiscal period."); *see also* § 129.01(2)(b), Fla. Stat. ("The budget must be balanced, so that the total of the estimated receipts available from taxation and other sources, including balances brought forward from prior fiscal years, equals the total of appropriations for expenditures and reserves.").

BREVARD COUNTY, FLORIDA, and NORTH BREVARD DEVELOPMENT DISTRICT, is hereby **DENIED**.

DONE AND ORDERED in Chambers at the Harry T. & Harriette V. Moore Justice Center, Viera, Brevard County, Florida, on 8/22/18, 2018.

JEFFREY MAHL
Circuit Judge

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