

IN THE
SUPREME COURT OF FLORIDA

CASE NO. 88,696

IN RE:

ADVISORY OPINION TO THE
ATTORNEY GENERAL
RE: PEOPLE'S PROPERTY RIGHTS

INITIAL BRIEF OF FLORIDA AUDUBON SOCIETY
AND NATIONAL AUDUBON SOCIETY

OPPOSING THE FOLLOWING PROPOSED AMENDMENTS:
PEOPLE'S PROPERTY RIGHTS AND
PROPERTY RIGHTS

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STATEMENT OF THE CASE

This matter comes before this Court upon a request for opinion submitted by the Attorney General on August 14, 1996, in accordance with the provisions of Article IV, Section 10, Florida Constitution, and Section 16.061, Florida Statutes. This brief is submitted on behalf of the Florida Audubon Society in response to the Order of this Court and is in opposition to a finding of validity of two proposed amendments entitled "Property Rights: Compensation for Unfair Value Loss Caused by Governmental Use Restrictions on Real Property," and "People's Property Rights Amendments Providing Compensation for Restricting Real Property Use May Cover Multiple Subjects." "Property Rights" proposes to amend the Florida Constitution to create a private right of action against government and a jury trial for full compensation for government actions which restrict real property. The provisions are a substantial change in inverse condemnation law and takings claims now brought pursuant to the Fifth Amendment to the United States Constitution. "People's Property Rights" attempts to carve out an exception to the Single Subject Rule of the Florida Constitution to allow such a far reaching proposal as "Property Rights." The protected interests of the Florida Audubon Society are substantially affected by the proposed constitutional amendments and it files this brief in opposition to the proposals.

STATEMENT OF THE FACTS

The proposed property rights amendments to the Florida Constitution (hereinafter referred to as "amendments") come before the Court following a number of Draconian attempts to expand protection of private property rights which have been rejected by the Florida Legislature and this Court. The purpose of these proposals is to create a right of action and jury trial for full compensation for government action which is far less than a Taking as contemplated by the Fifth Amendment to the United States Constitution. A number of bills were introduced in the 1993 Legislative Session¹ and a bill creating a Study Commission was vetoed by the Governor. Thereafter, the Governor appointed the Governor's Property Rights Study Commission II which issued a report on the issue. A bill similar to the recommendations of the Governor's Commission, as well as other bills were introduced in the 1994 Legislative Session.² Thereafter, the Tax Cap Committee circulated petitions to amend the constitution to greatly expand property rights. That proposed constitutional amendment was rejected by this Court in Advisory Opinion to Attorney General re 'Tax Limitation, (Tax Limitation I) 644 So. 2d 486 (Fla. 1994). The amendment was rejected because it had a substantial effect on multiple branches of government and was violative of the single subject rule. In 1995, the Florida Legislature spent a

¹ See Fla. HB 1437 (1993) and SB 1000 (1993).

² See Fla. HB 485 (1994), Fla. SB 630 (1994), and Fla. HJR 1953 (1994).

considerable amount of time on the issue of property rights resulting in the passage of a bill now codified as Chapter 70, Florida Statutes, Relief From Burdens on Real Property Rights. The Tax Cap Committee, not happy with the new act, has moved again to seek amendment to the constitution. The proposed amendments would greatly expand the notion of property rights and create an exemption to the single subject rule in order to expand property rights. The records of the Florida Secretary of State demonstrate that this effort is primarily funded and supported by sugar interests.

The Florida Audubon Society is a non-profit conservation organization whose main purpose is to help protect, preserve and manage the natural resources of the state on behalf of the organization and its members. Florida Audubon Society believes that the property rights amendment would be in direct conflict with Article II Section 7 of the Florida Constitution which declares, "It shall be the policy of the state to conserve and protect its natural resources and scenic beauty." Audubon believes that if the amendments were to take effect the units of state, regional, and local governments would be powerless to undertake growth management or environmental protection. A literal interpretation of the amendments would be to require the state of Florida to pay polluters to stop polluting.

SUMMARY OF ARGUMENT

The proposed Property Rights Amendment before the Court fails to comply with the provisions of Article XI, Section 3 of the Florida Constitution and Section 101.161, Florida Statutes (1993). Although the Court stated its reasons for rejecting the proposed 1994 property rights amendment, the new amendment does not overcome those reasons for rejection. The proposal violates the single subject rule and ballot title and summary requirements. It is a classic example of overbreadth, overkill, subterfuge and unanticipated effect, combined into a single, short amendment to the Constitution. The ultimate effect would be to change 200 years of property rights law and shut down government at all levels. Clearly, the ballot title and summary do not reflect this impact.

The fact that the Property Rights Amendment still violates the single subject rule is accentuated by the proponents' attempt to amend this very rule in the Florida Constitution with the People's Property Rights Amendment. Apart from highlighting the Property Rights Amendment deficiencies, this new attempt by the Tax Cap Committee to amend Article XI, Section 3 is equally flawed. First, the People's Property Rights initiative improperly impacts functions of the judicial branch by carving out an overly broad exception to the single subject rule which will impact every branch, function and level of Florida's government. Second, the impact and collateral effects of this initiative are not and cannot be known by the-public. Third, the entire amendment is confusing and misleading to the voter who is presumed to understand phrases

ARGUMENT

Under Article IV, Section 10 of the Florida Constitution, this Court, in an advisory opinion, must consider the validity of an initiative placed before the Court based on the standard set forth in Article XI, Section 3. The questions before the Court are: (1) whether the initiative "embrace[s] but one subject and matter directly connected therewith," and (2) whether the initiative has a ballot summary and title that is legally sufficient under Section 101.161(1), Florida Statutes. Section 16.061, Florida Statutes; see In re Advisory Opinion to the Attorney General - Restricts Laws Related to Discrimination, 632 So. 2d 1018, 1019 (Fla. 1994).

- I. **THE PROPOSED PEOPLE'S PROPERTY RIGHTS CONSTITUTIONAL AMENDMENT SHOULD BE REJECTED BY THE COURT BECAUSE IT IMPROPERLY INTERFERES WITH THE SINGLE SUBJECT RULE, AFFECTS MULTIPLE BRANCHES OF GOVERNMENT, AND ITS BALLOT SUMMARY IS CONFUSING AND MISLEADING**
 - A. **The single subject requirement of Article XI, Section 3 of the Florida Constitution.**

In its current form, Article XI, Section 3 provides that "[t]he power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment, except for those limiting the power of government to raise revenue, shall

embrace but one subject and matter directly connected therewith."³ The single subject rule has been explained by this Court as "a rule of restraint designed to insulate Florida's organic law from precipitous and cataclysmic change." In re Advisory Opinion to the Attorney General - Save Our Everglades Trust Fund, 636 So. 2d 1336, 1339 (Fla. 1994).

As this Court has explained it, the single subject rule operates to prevent log-rolling, a situation where voters are forced to "accept part of an initiative proposal which they oppose in order to obtain a change in the constitution which they support." Tax Limitation I, 644 So. 2d at 490 (quoting Fine v. Firestone, 448 So. 2d 984, 988 (Fla. 1984); Floridians Asainst Casino Takeover v. Let's Help Florida, 363 So. 2d 337, 339 (Fla. 1978). Log-rolling requires the voters to "cast an all-or-nothing vote on a proposal that affects multiple functions or entities of government." Tax Limitation I, 644 So. 2d at 490; Advisory Opinion to the Attorney General - Limited Marine Net Fishing, 620 So. 2d 997, 999 (Fla. 1993). The single subject requirement is also important because of the lack of a "legislative filtering process"

³Article XI, Section 3 has been twice amended. The first, in 1972, allowed initiatives to amend more than one section. Previously, an initiative creating a unicameral legislature was struck as defective because it affected several sections. Adams v. Gunter, 238 So. 2d 824 (Fla. 1970). The 1972 amendment allowed the amendment of several subjects and added the single subject requirement.

Most recently, in 1994, a limited exception from the single subject rule was established for initiatives "limiting the power of government to raise revenue." See Tax Limitation I, 644 So. 2d at 495-96.

inherent in an initiative amendment that does not allow for public hearing and debate in the drafting of a proposal. Save Our Everglades Trust Fund, 636 So. 2d at 1339 (quoting Fine, 448 So. 2d at 988); Evans v. Firestone, 457 So. 2d 1351, 1355 (Fla. 1984) (Overton, J., concurring). The standard is "strict compliance with the single-subject rule in the initiative process for constitutional change because our constitution is the basic document that controls our governmental functions." Fine, 448 So. 2d at 989.

The People's Property Rights Amendments initiative performs functions of the judicial branch. Reviewing compliance with Article XI, Section 3, the Court will determine whether the initiative performs, alters or substantially affects multiple, distinct governmental functions, **as** opposed to only a single function. Save Our Everglades Trust Fund, 636 So. 2d at 1340; Restricts Laws Related to Discrimination, 632 So. 2d at 1020; Evans, 457 So. 2d at 1354 (when an amendment "changes more than one government function, it is clearly multi-subject"); Fine, 448 So. 2d at 990. In this analysis, the Court looks to whether the amendment affects a function of more than one branch of government, whether it affects multiple functions of a single branch, or whether it affects a function performed by multiple levels of government, e.g., state, county, municipal. See Advisory Opinion to the Attorney General re Funding for Criminal Justice, 639 So. 2d 972, 973 (Fla. 1994); Save Our Everglades Trust Fund, 636 So. 2d at

1340; Restricts Laws Related to Discrimination, 632 So. 2d at 1020 (citing Fine, 448 So. 2d at 990).

By definition, an exception to the single-subject rule requires the Supreme Court at a future time to make a judgment on a combination of topics. It co-opts the Court as arbiter of the application and definition of the exception for future amendments, This is especially the case as, unlike the relatively simple tax issue dealt with in the Revenue Limits Initiative, amendments dealing with the compensation for possible impacts on private property are broad and complex, impacting literally every branch, function and level of Florida's government.

This Court has also said that it will consider whether the amendment will cause substantial impact on other sections of the constitution, Tax Limitation I, 644 So. at 490; Restricts Laws Related to Discrimination, 632 So. 2d at 1019; Fine, 448 So. 2d at 990. This Court has stated that it is important to identify parts of the constitution which are substantially affected by the proposed initiative, both to inform the public of the changes and to avoid ambiguity as to the amendment's effects. Tax Limitation I, 644 So. 2d at 490; Fine, 448 So. 2d at 989. The Court has noted that the single subject test is a functional, not a locational test, however, and the focus of the Court's review is an amendment's effect on governmental functions. Save Our Everslades Trust Fund, 636 So. 2d at 13404 (quoting Evans, 357 So. 2d at 1354). " [T]he possibility that an amendment might interact with other parts of the Florida Constitution is not sufficient

reason to invalidate the proposed amendment." Advisory Opinion to Attorney General Re Limited Casinos, 644 So. 2d 71 (Fla. 1994) (citing Advisory Opinion to Attorney General English - The Official Language of Florida, 520 So. 2d 11, 12-13 (Fla. 1988)).

The impacts of the People's Property Rights Amendments initiative are as yet unknown, Therefore, the public is inevitably asked to grant a blank check to proposers of future property rights amendments or, more properly, to proposers of future amendments which may relate to property rights, to allow them to incorporate policies as yet unknown into a property rights amendment. How can the public be expected to know the impact of such pre-approved logrolling?

In the People's Property Rights Amendments initiative, this Court is confronted with a proposal that co-opts the judiciary into its very structure. The initiative exempts from its coverage "common law nuisances" (determined by the judiciary) and further contains two elements which are essentially judicial in nature: the loss in fair market value due to government restriction of land use and the enigmatic clause "which in fairness should be borne by the public." These clauses might be acceptable in the amendments which limit government regulation of property or require compensation, but to introduce these two novel concepts into Article XI, Section 3, introducing this distinction for certain types of citizen initiatives, amounts to a drastic change in the requirement for citizen initiatives.

This feature distinguishes People's Property Rights Amendments from its sister Revenue Limits which this Court approved in 1994. See Tax Limitation I, 644 So. 2d at 495-96. That amendment introduced the limited and readily understandable exception to the single subject rule for initiative amendments "limiting the power of government to raise revenue." Id. Revenue Limits needed no further and ongoing judicial clarification and explanation, unlike the instant amendment.

People's Property Rights Amendments, on the other hand, represents an attempt not just to circumvent the protections provided to voters by the single subject amendment, but to also involve this Court in an unknown minefield of new potential initiative litigation. Who shall decide that the costs of government regulation "in fairness should be borne by the public?" This Court, obviously, will be the arbiter in such cases. Likewise for initiatives which may or may not affect "common law nuisances." In sum and in contrast to Revenue Limits, this amendment substantially affects the judicial functions and this Court's own role in scrutinizing initiative amendments.

This Court has said that it will inquire as to whether an amendment will have multiple unanticipated collateral effects on areas or topics removed from the stated subject of the initiative. Restricts Laws Related to Discrimination, 632 So. 2d at 1022 n.6 (Kogan, J., concurring); Fine, 448 So. 2d at 995 (McDonald, J., concurring). The existence of such disguised effects may well result in voters being asked to vote on an amendment "whose

consequences may not be readily apparent or desirable to the voters." Restricts Laws Related to Discrimination, 632 So. 2d at 1023 (Kogan, J., concurring). The initiative process is designed to work a limited, single change, and thus cannot be used to substantially alter "part of Florida's legal machinery regardless of the consequences to the rest of our governmental system." Id. at 1022 (Kogan, J., concurring). An amendment's collateral effects cannot be allowed to seriously disrupt other important functions of Florida's government and law. Id. at 1024 (Kogan, J., concurring).

The People's Property Rights Amendments initiative exhibits just those unknown, indeed unknowable collateral effects which render an initiative invalid. To quote Justice Kogan, concurring in Restricts Laws Related to Discrimination:

It is beyond question that the initiative process does not exist as a method for yanking away or substantially altering part of Florida's legal machinery regardless of the consequences to the rest of our governmental system. The various parts of the Constitution require a harmony of purpose both internally and within the broader context of the American federal system and Florida law itself. Any initiative that tends to undermine that harmony most probably will violate the single-subject and ballot summary requirements, because the initiative is proposing to do something that may have a broad and unstated "domino effect."

632 So. 2d at 1022 (Kogan, J., concurring).

Worst of all, the People's Property Rights Amendments initiative itself amounts to logrolling. "The voter should never be put in a position of voting on something that, while perhaps appearing to do only one thing, actually also result in other consequences that may not be readily apparent or desirable to the voters. That would be a classic violation of the single subject

requirement." Restricts Laws Related to Discrimination, 632 So. 2d at 1023 (Kogan, J., concurring). The instant amendment, combining several subjects under the term "compensation for restricting real property use" indulges in this impermissible logrolling. The amendment will open the door for requiring compensation for vast degrees of government action, whether local land use and zoning laws, or state agency rules or enforcements, or potential emergency actions. Voters might legitimately wish to have this additional protection at the state agency level, while maintaining the existing system at the local level, or vice versa. They are not given a choice, but must accept all or nothing.

The two proposals sponsored by the Tax Cap Committee are inter-related and connected. The sponsors of the People's Property Rights Amendments initiative are also the sponsors of a Property Rights initiative amendment. Indeed, the crafting of an exception to the single subject rule for these amendments is only meaningful when accompanied by a petition that will benefit from the created exception. In other words, the two amendments are mutually dependent upon one another for any meaningful application and have no separate existence. Strike the People's Property Rights Amendments initiative and the whole, delicately constructed edifice crumbles. The true Property Rights initiative, one which patently and purposefully involves several subjects, fall. Similarly, such an intricate exception to the single subject rule has no meaning unless accompanied by another amendment to give it application. Neither petition has any meaningful existence without the other.

Significantly, the Tax Cap Committee, sponsor of these two initiative petitions, has a record that demonstrates this pattern. The sponsor of these two amendments has used this strategy before to great effect. In 1994, it sponsored two such related amendments, Tax Limitation and Revenue Limits. The Court, in Tax Limitation I, 644 So. 2d 486 (Fla. 1994) found the Tax Limitation amendment violated the single subject rule, while allowing the Revenue Limits (which created an exception to the single subject rule for initiatives which limited the power of government to raise revenue). In 1995, this sponsor re-submitted the original Tax Limitation amendment, which now benefitted from the exception created in 1994. Advisory Opinion to Attorney General re Tax Limitation, (Tax Limitation II), 673 So. 2d 864 (Fla. 1996). The Tax Cap Committee engages in a persistent policy of removing ever greater areas of law from the Supreme Court's initiative scrutiny as originally established under Article XI, Section 3. This practice is unwise and must be halted.

B. The People's Property Rights Amendment Is Misleading

The title and summary for the proposed People's Property Rights Amendments initiative are clearly defective under the standard of Section 101.161, Florida Statutes. Simply put, both title and summary mislead the voters. Under the bold slogan "People's Property Rights Amendments," the initiative uses rhetorical devices not to inform but to seduce voters. Promising to "expand the people's rights," the title and summary mask the full truth: this amendment will take **away** the people's protection

from logrolling by creating a broad, cumbersome and vaguely defined exception to the single subject rule for initiative amendments.

This Court reviews title and summary to ensure that "the electorate is advised of the true meaning, and ramifications of an amendment." Tax Limitation I, 644 So. 2d at 4904; Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982). A voter "must be able to comprehend the sweep of each proposal from a fair notification in the proposition itself that it is neither less nor more extensive than it appears to be." Askew, 421 So. 2d at 155 (quoting Smathers v. Smith, 338 So. 2d 825, 829 (Fla. 1976)).

The title "People's Property Rights **Amendments**" immediately promises more than this amendment will deliver, playing upon the inherent respect for the sanctity of private property felt by most voters. Combining this slogan with the summary's promise to "expand the people's rights" is just the sort of subjective, emotion-laden language decried by this Court in Save Our Everglades Trust Fund, 636 So. 2d at 13414 (noting that the text of the unsuccessful Save Our Everglades initiative stated that its purpose was to "restore" the Everglades, while the "emotional language of the title" might mislead voters that the purpose was to "save" the Everglades); cf. Evans, 457 So. 2d at 1355. The title and summary are defective for weaving a web of deceit around the true changes wrought to the Constitution. The summary of the People's Property Rights Amendments initiative is akin to that condemned in Fine, where "the proponents' simplistic explanation reveals only the tip of the iceberg." 448 So. 2d at 995 (McDonald, J., concurring).

A further problem with the summary is the reliance it places upon a sophisticated legal knowledge to be intelligible. Voters are not stupid, and there is a presumption that they have "a certain amount of common sense and knowledge." Tax Limitation II, 673 So. 2d at 868. However, this common sense and experiential knowledge which, in Tax Limitation II, allows one to assume that voters understand that majorities prevail in elections are vastly different from the sophisticated knowledge demanded of a reader of the instant amendment. Such topics as "common law nuisances" may not be commonly understood, nor will the phrase "which in fairness should be borne by the public," borrowed from takings and eminent domain law.

The breadth of the People's Property Rights Amendments initiative is not fully disclosed to the voters. The voters are not told that local zoning laws, emergency laws, agency enforcement actions of any sort might be affected. The voters are not advised, nor does the amendment say how fair market value is to be determined and whether the existing system as used in takings cases or eminent domain litigation will be used. In short, the title and summary fail to "give the electorate fair notice" of the effects of the initiative. Fine, 448 So. 2d at 995 (McDonald, J., concurring). This Court should hold that the title and summary for the People's Property Rights Amendments initiative fail to comply with the standards of Section 101.161, Florida Statutes.

11. **THE PROPOSED PROPERTY RIGHTS CONSTITUTIONAL AMENDMENT SHOULD BE REJECTED BY THE COURT BECAUSE IT VIOLATES THE SINGLE SUBJECT RULE, AFFECTS MULTIPLE BRANCHES OF GOVERNMENT, AND ITS BALLOT SUMMARY IS MISLEADING.**

The Tax Cap Committee has failed to correct the problems in its 1994 Property Rights Amendments which was rejected by this Court. In 1994, the Tax Cap Committee proposed the following amendment to Article I, Section 2:

Any exercise of the police power, excepting the administration and enforcement of criminal laws, which damages the value of a vested private property right, or any interest therein, shall entitle the owner to full compensation determined by jury trial with a jury of not fewer than six persons and without prior resort to administrative remedies. This amendment shall take effect the day after approval by the voters.

Tax Cap proposed a new Property Rights Amendment for 1996. It is a proposed amendment to Article X but it is a restatement of the subject matter rejected in 1994. The proposal is as follows:

Section () - Property Rights: Compensation for Unfair Value Loss Caused by Governmental Use Restrictions on Real Property. When any action or regulation by the state, its agencies or political subdivisions restricts the use (other than nuisances at common law) of part or all of private real property causing a loss in the fair market value of the affected real property for the public good, which in fairness should be borne by the public as a whole, full compensation shall be paid to the owner thereof. All issues shall be determined by jury trial in circuit court without prior resort to administrative remedies. This provision shall apply to actions taken and regulations enacted after the effective date of this amendment as well as to applications after the effective date of this amendment of regulations enacted on or before the effective date of this amendment without abrogating any other remedy lawfully available.

Although the 1996 proposal is drafted in an attempt to be more particular than the 1994 proposal, it is in fact more broad in its effect. The 1996 amendment affects "any action or regulation" which

is broader than the "any exercise of police power" phrase in the rejected 1994 amendment. The 1996 amendment affects "part or all of private real property" which is much broader than the phrase "vested private property right" in the rejected 1994 amendment. The 1996 amendment is triggered by a "loss in fair market value" rather than "damages" in the 1994 proposal. The 1994 proposal which was rejected is narrower in time because it **was** applied only prospectively. The 1996 proposal reaches back in time to apply to the current enforcement of previously enacted regulations.

The 1996 proposal is very similar to the 1994 proposal. The gravamen of the proposal is to grant **a** private right of action against government and **a** trial by jury to grant full compensation when a regulation causes a loss in fair market value to real property. The cause of action created by this proposal is something less than an inverse condemnation claim or a takings claim under the Fifth Amendment to the United States Constitution. The test under federal Constitutional law is that the regulation must deprive the owner of practically all use of the property, Lucas v. South Carolina Coastal Commission, 112 S.Ct. 2886 (1992). This is a fact-driven exercise where the Court must consider many factors other than loss of fair market value. Reahard v. Lee County, 968 F.2d 1131 (11th Cir. 1992).

In examining the 1994 Property Rights proposal, the Court rejected it because it violated the single subject rule. Therein, it stated:

"We find that the 'Property Rights' initiative violates the single-subject requirement because it substantially

alters the functions of multiple branches of government . . . This initiative not only substantially alters the functions of the executive and legislative branches of state government, it also has a very distinct and substantial affect on each local governmental entity. The ability to enact zoning laws, to require development plans, to have comprehensive plans for a community, to have uniform ingress and egress along major thoroughfares, to protect the public from diseased animals or diseased plants, to control and manage water rights, and to control or manage storm-water drainage and flood waters, all would be substantially affected by this provision. . . . We also note that the initiative transfers all administrative remedies for police power actions that damage private property interests from the executive branch to the judicial branch. Given this substantial effect on the executive, legislative, and local branches of government, we find that the 'Property Rights' initiative violates the single-subject requirement."

(Citation omitted) Tax Limitation I, 644 So. 2d 486 at 494-495.

The 1996 proposal does not cure the defects identified in the 1994 proposal. The 1994 proposal was also found to be defective because it violated the requirement that ballot title and summary must give the true meaning and ramifications of the amendment. In 1994 the Court found:

"The 'Property Rights' ballot title and summary does not properly advise the voters, and it is not accurate and informative. This proposal would result in a major change in the function of government because it would require all entities of government to provide compensation from tax revenue to owners or businesses for damages allegedly caused to their property by the government's exercise of its police powers. Because most true police power actions of government are not now compensable, the fiscal impact of this proposal would be substantial. The proponents of the initiative acknowledge that the police powers affected by this initiative are broad and, in their words, 'take any number of forms, such as flooding, deprivation of access, environmental regulation and permitting, zoning **ordinances**, and development exactions, among others.' The ballot title and summary are devoid of any mention of these consequences."

Tax Limitation I, 644 So. 2d 486 at 495.

Similarly, the 1996 proposal does not explain the consequences of its action. It is ambiguous because the new clauses in the proposal are unclear.

--* What does "restricts the use" mean? Could it be stretched to include the restriction on an industrial use in a residential area?

--m What is a "nuisance at common law?" Does that mean that government can only prohibit nuisances?

--* What is the effect of the phrase "part or all of private real property." Does that mean that a government restriction on developing wetlands on one acre of a 100-acre parcel would give rise to a civil action for full compensation for the loss of the one acre?

--m What does the phrase "for the public good, which in fairness should be borne by the public as a whole" mean? Does this abrogate the police powers concept of "health, safety, and morals of the community?" Isn't this really political rhetoric which this Court failed to condone in previous initiatives? See Save

Our Everglades Trust Fund, 636 So. 2d 1336, 1342 (Fla. 1994).

--m What does the clause "without prior resort to administrative remedies" mean? Does it mean that government will not be given an opportunity to correct or modify the alleged egregious actions? All of these questions reveal that this amendment is in fact confusing and misleading.

The most troublesome aspect of the proposed amendment is its attempt to reach back and be applicable to all government regulations currently in effect. This is a naked attempt to undo

a generation of growth management and environmental regulations at the state and regional level and all zoning and planning regulations in every area of Florida. The ballot summary does not convey to the average voter the simple fact that to adopt this change in the constitution would completely emasculate government attempts to control growth and protect the natural resources of this state. It is hard to imagine a single constitutional provision that would so change the present law and impact so many different facets of our society. The Property Rights proposal ignores the simple fact that our system of growth management, environmental protection, and local zoning regulation is what protects real property. For most people, the ownership of a home is the greatest single investment that hard working people make. That investment is protected by rules that prevent adverse uses from being built next door. Those rules deriving from the police power and Article II Section 7 of the Florida Constitution generally keep unsavory interests from building adult entertainment, intense industrial uses, high-rise condominiums, landfills, hazardous waste facilities, or livestock operations next door to your home. The proposed amendment gives no notice to the voters that the real hidden effect of the initiative is to usurp all of these essential and necessary governmental regulations.

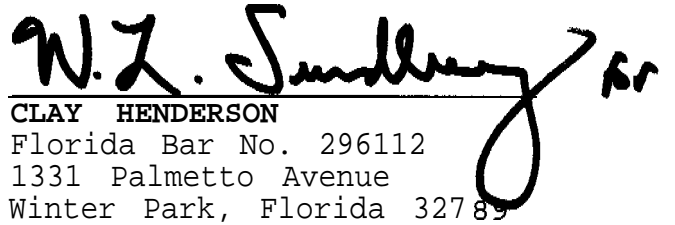
CONCLUSION

The proposed Property Rights Amendment and its companion People's Property Rights amendment do not meet the required tests for a proper ballot initiative. They both contain multiple subject matters as they substantially affect multiple branches of government. The ballot summaries for both amendments are misleading. The Property Rights summary does not inform the voters of its chief effect and misleads because it does not notify the voter of its principal goal to eliminate government's ability to protect the state's natural resources. The People's Property Rights summary is cumbersome and confusing to a typical voter as it uses terms like "common law nuisance" and "**which** in fairness should be borne by the public." Voters will most certainly be asking themselves, "**What** does this mean?" For all these reasons the amendments should not be permitted on the ballot.

REQUEST FOR ORAL ARGUMENT

Florida Audubon Society as an interested party, requests oral argument in this proceeding.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy has been furnished to
ROBERT BUTTERWORTH, Office of the Attorney General, The Capitol,
Plaza Level-01, Tallahassee, Florida 32399-1963, by U.S. Mail, this
16th day of September, 1996.

N. Z. Henderson
CLAY HENDERSON