

No. 08-1151

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 2009

STOP THE BEACH RENOURISHMENT, INC.,
Petitioner,
v.
FLORIDA DEPARTMENT OF ENVIRONMENTAL
PROTECTION AND CITY OF DESTIN, et al.,
Respondents

On Writ Of Certiorari To
The Florida Supreme Court

**BRIEF AMICUS CURIAE OF CITIZENS FOR
CONSTITUTIONAL PROPERTY RIGHTS LEGAL
FOUNDATION, INC. IN SUPPORT OF PETITIONER**

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INTERESTS OF THE AMICUS CURIAE¹

Pursuant to Supreme Court Rule 37, the Citizens for Constitutional Property Rights Legal Foundation, Inc. (CCPR) respectfully submits this brief amicus curiae in support of Petitioner Stop the Beach Renourishment, Inc. Counsel of record for all parties received notice of CCPR's intention to file this brief on August 10, 2009. Further, by letter dated July 7, 2009, all parties consented to the timely filing of amicus briefs.

CCPR is a non-profit Florida-based organization, incorporated in 1994 and in good standing, to help citizens defend themselves against unjust laws and regulations and to challenge through litigation laws and regulations that take or devalue the property of individuals without just compensation. Its membership includes legal counsel, legal staff, professionals/experts, and supporting corporations and individuals. Its guiding principles include the belief that citizens should feel secure in their property, which should not be infringed upon without due legal process. Its parent organization, Citizens for Constitutional Property Rights, Inc., has existed since 1990 and works to prevent the erosion of property rights by unfair government action, including participation in amicus curiae briefs related to property rights issues.

¹ Pursuant to Supreme Court Rule 37.6 the Amicus states that its counsel authored this brief. No counsel for a party authored this brief in whole or in part, and no person other than the Amicus and its members made a monetary contribution to the preparation of the brief.

The impact of this case on the Amicus and its members is significant. Some members are likely to be adversely affected by the decision of the Florida Supreme Court herein, particularly with regard to their rights of access to the Atlantic Ocean and the Gulf of Mexico, to maintain their properties' contact with the water, and to benefit from accretions and relictions affecting their properties. Because of its interest in protecting property rights, including riparian and littoral property rights, CCPR believes its perspective will aid the Court in its final decision.

SUMMARY OF ARGUMENT

The "right" of the State of Florida to take the constitutional littoral rights of a private property owner without due compensation does not exist. Similarly, if constitutional littoral rights are "vested" property rights or "property" under long-standing Florida common law, littoral owners hold justifiably high expectations with respect thereto, and the taking of their property without compensation and without due process is unconstitutional.

The standards for achieving common law vested property rights in littoral property are defined in terms of the littoral upland and differ significantly from the criteria pertaining to acquiring common law vested "development rights" in the development review process. However, the classification of a right as vested in both instances creates a reasonable and heightened expectation that such a rights cannot be taken by the government without due process and just compensation.

The background principles of Florida real property law include the vested rights of littoral owners. The Florida Supreme Court cannot reject claims of littoral owners regarding violations of their constitutional property rights by retroactively asserting that such rights never existed, or by suddenly invoking new previously non-existent rules of state substantive law.

ARGUMENT

- I. IF CONSTITUTIONAL LITTORAL RIGHTS ARE VESTED PRIVATE PROPERTY RIGHTS UNDER FLORIDA LAW, THE ALREADY HIGH EXPECTATIONS OF UPLAND LITTORAL OWNERS TO USE AND HAVE ACCESS TO THE ADJOINING WATER, AND TO MAINTAIN THEIR PROPERTIES' CONTACT WITH THE WATER ARE SIGNIFICANTLY ELEVATED, SO AS TO FURTHER PROTECT THEM FROM HAVING THEIR PROPERTIES TAKEN BY THE STATE WITHOUT JUST COMPENSATION OR DUE PROCESS.
 - A. The common law property rights of littoral owners have been shaped by decisions of the Florida Supreme Court over the past century which, until that court's decision now under review, have consistently recognized littoral rights as protected "vested rights," "property," "special rights," or in other similar terms.

It is well-established in property jurisprudence that property interests are created by state law.

Property interests, of course, are not created by the Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits. *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972).

Littoral rights have repeatedly been described by the Florida Supreme Court in the most favored of legal terms such as “vested,” “vested rights,” “property,” or “special rights.”^{2/} See Argument I.B. *infra*. These are not mere claims or theories, but are consistent rulings of the Florida high court for many decades regarding the *legal status* of littoral ownership. Indeed, the Amicus believes that the concept of vested rights as “property” merits consideration as a “background principle” (or even a “foreground principle”) of Florida common law

^{2/} Vested littoral rights are defined in terms of the littoral upland, whereas vested rights in the development review process often depend upon an external event, such as the issuance of a lawful building permit approved pursuant to a local government’s police power. See section I.B, *infra*. The Amicus, like the Petitioner, will attempt to use the term “littoral” throughout its brief, with some reference to “riparian,” in recognition of the fact that Florida courts have used the terms “littoral” and “riparian” interchangeably. See Brief of Petitioner at 7, n.2.

that favors littoral property rights. *See, e.g., Lucas v. South Carolina Coastal*, 505 U.S. 1003 (1982); *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001).

“Vested rights” have been defined as follows:

Vested rights. In constitutional law, rights which have so completely and definitely accrued to or settled in a person that they are not subject to be defeated or canceled by the act of any other private person, and *which it is right and equitable that the government should recognize and protect, as being lawful in themselves, and settled* according to the then current rules of law, and of which the individual could not be deprived arbitrarily without injustice, or of which he could not justly be deprived otherwise than by the established methods of procedure and for the public welfare. *Such interests as cannot be interfered with by retrospective laws; interests which it is proper for [the] state to recognize and protect and of which [an] individual cannot be deprived arbitrarily without injustice.* BLACK’S LAW DICTIONARY 1402 (5th ed. 1979).

Based upon decisions of the Florida Supreme Court since 1909,^{3/} littoral property owners within

^{3/}These include *Bd. of Trs. of the Internal Improvement Trust Fund v. Sand Key Assoc., Ltd.*, 512 So. 2d 934, 936 (Fla. 1987); *Belvedere Dev. Corp. v. Dep’t of Transp., Div. of Admin.*, 476 So. 2d 649, 652 (Fla. 1985); *State v. Fla. Nat’l Props., Inc.*, 338 So. 2d 13, 17 (Fla. 1976); *Brickell v.*

the State have justifiably formed high “expectations” regarding the benefits arising from their ownerships. These are reasonable expectations that support their claims of entitlement to those benefits. The rights accruing to littoral owners constitute “property” in a constitutional sense.

The littoral owners’ “property interest” in the benefits of their ownership would be highly reasonable even without all of the precedents emanating from the Florida high court over so long a period of time. However, the addition of these precedents wherein littoral rights have consistently been equated to “vested rights,” or “property” (*Sand Key*) has created “a legitimate claim of entitlement” to the protection of the littoral owners’ rights. See, e.g., *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104 (1978).

In *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1016, n.7 (1992), the Court stated that in determining a takings claim, a court should consider how the “owner’s reasonable expectations have been shaped by the State’s law of property,” that is “whether and to what degree the State’s law has accorded legal recognition and protection to the particular interest in land” which the landowner contends has been eliminated or diminished in value.

Trammell, 82 So. 221, 227 (Fla. 1919); *Thiesen v. Gulf, Fla. & Ala. Ry. Co.*, 78 So. 491, 507 (Fla. 1917); *Broward v. Mabry*, 50 So. 826, 830 (Fla. 1909) .

As stated by the Petitioner, “not one Florida Supreme Court case in 100 years—until now—has ever questioned or called into doubt the bedrock principle of Florida law that owners of littoral property had constitutionally protected property rights in the direct access to the ocean and the right to accretion.” (Petition for Writ of Certiorari at 5.) Throughout this long period, Florida law has required landowners to own to the Mean High Water Line (“MHWL”) in order to be considered a littoral owner and possess such rights. *Id.* All of this changed with passage of the Beach and Shore Preservation Act, Chapter 161 of the Florida Statutes (2003) (the “Act”), and the Florida Supreme Court’s analysis of the Act in *Walton County v. Stop the Beach Renourishment*, 998 So. 2d 1102 (Fla. 2008). As stated in the Petition for Writ of Certiorari:

[I]n its rush to restore “critically eroded” beaches, . . . [the State of Florida] . . . decided to sever an oceanfront property owner’s contact with the ocean by unilaterally altering and replacing the MHWL as the property boundary for a 6.9 mile stretch of beach with a fixed “Erosion Control Line” (“ECL”). This 6.9 mile property boundary modification was accomplished through the simple recording of a single survey (affecting 453 individual properties, 5 of which belong to Petitioner’s members) with no judicial approval required. The scheme of [the Act] . . . further results in a complete elimination of some of the 100-year-old littoral property rights and replaces them with statutory rights without

any judicial proceeding or compensation.
(Petition for Writ of Certiorari at 5-6)
(footnotes omitted).

Upon the State's recording of a survey and replacement of the MHWL with a fixed Erosion Control Line ("ECL"), title to properties seaward of the ECL was "deemed to be vested in the State by right of its sovereignty." Fla. Stat. § 161.191 (1) (2003). The establishment of the ECL divested hundreds of upland riparian landowners of all of their common law littoral rights. Petition for Writ of Certiorari at 7-8. No judicial proceedings occurred and no compensation was paid. *Id.* at 6.

The decision below of the Florida Supreme Court eliminated or reduced many long-standing littoral property rights. The Florida Supreme Court upheld the Act and redefined the littoral right to accretion as "a contingent future interest [that] only becomes possessory if and when land is added to the upland by accretion or reliction." *Walton County*, 998 So. 2d at 1112. Thus, said the Court, the littoral right of accretion is not 'implicated' or applicable.^{4/} *Id.* at 1120. Further, the Florida high court held *inter alia*, for the first time—contravening a century of common law—that

^{4/} Many decisions of the Florida Supreme Court have accepted the common law principle that title to additional lands caused by accretions and relictions is vested in owners of abutting waterfront lands. *See, e.g., Florida National; Brickell, Thiesen; Merrill-Stevens Co. v. Durkee*, 57 So. 428 (1911). In 1864, The United States Supreme Court recognized accretions and relictions as a vested property right. *See Banks v. Ogden*, 69 U.S. 57, 67 (1864).

the constitutional right to have upland littoral property remain in contact with the MHWL is only “ancillary” to and subject to the right of access, and that “under Florida common law, there is no independent right of contact with the water.” *Walton County*, 998 So. 2d at 1119.

B. The standards for achieving common law vested “property rights” in littoral property are defined in terms of the littoral upland and are significantly different from the criteria pertaining to common law vested “development rights” in the development review process.

In the traditional police power multi-stage development review process in place in most states, a pending—but not completed—project must have received a lawfully issued building permit in order to be vested.^{5/} Unlike a vested development right achieved through the lawful issuance of a building permit or other external event in the development review process pursuant to a local government’s

^{5/} See, e.g., John J. Delaney and Emily J. Vaias, *Recognizing Vested Development Rights as Protected Property in Fifth Amendment Due Process and Taking Claims*, 49 *WASH. U. J. URB. & CONTEMP. L.* 27 (Summer 1996). Thirty-one states rely in some fashion upon issuance of the building permit. *Id.* at 40-44. Vesting of pending projects in Florida has been based upon issuance of a building permit or on equitable estoppel. *Id.* at 51-52. Some states authorize vesting at an earlier point in the development review process, such as upon approval of a subdivision plan. *Id.*

police power,^{6/} a vested right in littoral property is defined in terms of the littoral upland.

Florida common law for decades prior to the Florida Supreme Court's decision in *Walton County* reaffirmed that court's consistent application of vested rights analysis when dealing with littoral land. For example, in *Belvedere Dev. Corp. et al. v. Dep't. of Transp., Div. of Admin.*, 476 So. 2d 649 (Fla. 1985), the Florida high court stated that littoral and riparian rights in the State are "property." *Belvedere* 476 So. 2d at 652 (emphasis supplied). *Belvedere* further instructs that riparian rights are unique in character.

The source of those rights is not found within the interest itself, but rather they are found in, and are defined in terms of the riparian upland. In most cases, therefore, *it is not difficult to find that riparian rights are an inherent aspect of upland ownership and are not severable from it.* *Id.* at 652 (quoting *Thiesen*, 78 So. at 507 (emphasis supplied)).

* * *

Riparian rights are those incident to land bordering upon navigable waters. They are rights of ingress, egress, boating, bathing and fishing and such others as may be or

^{6/} For a leading case on vesting of development rights under various legal theories, see, *Western Land Equities, Inc. v. City of Logan*, 617 P.2d 388 (Utah 1980).

have been defined by law. *Such rights are not of a proprietary nature. They are rights inuring to the owner of the riparian land but are not owned by him. They are appurtenant to and are inseparable from the riparian land.* The land to which the owner holds title must extend to the ordinary high water mark of the navigable water in order that the riparian rights may attach. Conveyance of title to or lease of the riparian land entitles the grantee to the riparian rights running therewith whether or not mentioned in the deed or lease of the upland. *Belvedere* 476 So. 2d at 652 (quoting FLA. STAT. ch. 197.228 (1983)) (emphasis supplied).

Again in 1987, in *Sand Key* the Florida Supreme Court, citing several precedents, reiterated that littoral rights are “legal rights” and for “constitutional purposes, the common law rights...of littoral owners *constitute property.*” *Sand Key*, 512 So. 2d at 936 (emphasis supplied). The *Sand Key* court further stated:

Riparian and littoral property rights consist not only of the right to use the water shared by the public, but include the following *vested rights*: (1) the right of access to the water, *including the right to have the property’s contact with the water remain intact*; (2) the right to use the water for navigational purposes; (3) the right to an unobstructed *view* of the water; and (4) the *right to receive accretions and relictions* to

the property. In *Brickell*, we said these riparian or littoral rights are ‘*property rights* that may be regulated by law, but may not be taken without just compensation and due process of law,’ ... and *we recently re-affirmed that principle in Florida National Properties, Inc. Id.* (emphasis added) (citations omitted).

- C. If littoral rights are vested property rights under Florida law, the expectations of the littoral owners regarding their right of access to the water, their right to have their properties’ contact with the water remain intact, and related rights are patently reasonable, and the taking of their properties without compensation and without due process was unconstitutional.**

The expectations of littoral owners regarding the use of their properties are dramatically increased and deserving of the Court’s protection if their littoral rights have vested.

Based upon *Sand Key* (1987); *Belvedere* (1985); *Florida National* (1976) (*riparian owner of land bounded by the ordinary high water mark is vested with title to land formed by accretion or reliction which cannot be taken without compensation in violation of the due process clause of the Fourteenth Amendment*); as well as *Brickell*, 52 So. at 561 (littoral rights are “special rights” which are “easements” and “property rights”); *Thiesen* (1917) (riparian rights are “property”); and other decisions of the Florida Supreme Court cited in Footnote 3,

supra, it is very probable that the rights of the littoral owners represented by the Petitioner herein to continue the present use of their properties and enjoy the benefits thereof had vested. If that is the case, their already reasonable and high expectations regarding their right of access to the water and to have their properties' contact with the water remain intact would have achieved an even higher degree of legitimacy and entitlement under Florida law.

D. The “right” of the State of Florida to take the constitutional littoral rights of a private property owner without due compensation is a right that does not exist

The State's physical taking of the vested littoral rights of hundreds of property owners without full compensation grossly exceeded its powers under the Takings Clause of the Fifth Amendment and the Due Process Clause of the Fourteenth Amendment to the Federal Constitution. This action also violated Article X, Section 6 of the Florida Constitution. More than 90 years ago in *Thiesen*, the Florida Supreme Court stated:

Riparian rights we think are property, and, being so, the right to take it for public use without compensation does not exist. The fronting of a lot upon a navigable stream or bay often constitutes its chief value and desirability, whether for residence or business purposes. The right of access to the property over the waters, the unobstructed view of the bay, and the

enjoyment of the privileges of the waters incident to ownership of the bordering land would not, in many cases, be exchanged for the price of an inland lot in the same vicinity. In many cases, doubtless, the riparian rights incident to the ownership of the land were the principal, if not sole, inducement leading to its purchase by one and the reason for the price charged by the seller. *Thiesen*, 78 So. at 507.

The Court in *Thiesen* also cited to Justice Miller in *Yates v. Milwaukee* speaking for the Supreme Court of the United States:

This riparian right is property, and is valuable, and, though it must be enjoyed in due subjection to the rights of the public, it cannot be arbitrarily or capriciously destroyed or impaired. It is a right of which, when *once vested, the owner can only be deprived in accordance with established law*, and if necessary that it be taken for the public good, *upon due compensation*. *Thiesen* 78 So. at 507 (quoting *Yates v. Milwaukee*, 77 U.S. 497, 504 (1870)) (emphasis added).

**II. THE FLORIDA SUPREME COURT'S SUD-
DEN, UNPREDICTABLE CHANGE IN
WALTON COUNTY REGARDING THE
STATE'S COMMON LAW OF LITTORAL
RIGHTS SHOULD RECEIVE HIGHER
SCRUTINY FROM THE COURT, PARTICU-**

**LARLY WHEN VESTED PROPERTY
RIGHTS HAVE BEEN HARMED**

In stark contrast to the total lack of any legal authority or government “right” to take the littoral owners’ properties without just compensation, the littoral rights from which the affected property owners were dispossessed were “vested rights.” *Thiesen*, 78 So. at 507. (As noted above, the common law in Florida would seem to qualify as a “background principle” of the State’s law of property that supports the cause of littoral owners.) In any event, the vested rights of the affected property owners herein result in their having property interests of the highest order. Accordingly, they are entitled to Constitutional protection from such a sudden change in the State’s law of property and from having their littoral rights physically taken without just compensation or due process. *See, e.g., Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982).

A. The Florida Supreme Court cannot reject the littoral owners’ claimed violations of their vested constitutional property rights by asserting retroactively that such rights never existed

In *Walton County*, the majority opinion states that contact with the water is not the “legal essence” of littoral land, but is “merely” an “ancillary concept” that is subsumed by the right of access. *Walton County*, 998 So. 2d at 119, citing *Belvedere*, 476 So. 2d 649, 651-52 (Fla. 1985). To the contrary, based upon the reasons cited by the

Petitioner (Petitioner's Brief at 21-27), this ruling appears to be directly contrary to *Belvedere, Sand Key, Florida National*, and the other cases cited in Footnote 3, *supra*.

Justice Stewart's concurring opinion in *Hughes v. State of Washington*, 389 U.S. 290 (1967), is cited often by the Petitioner.^{7/} The issue before the Court in *Hughes* was whether federal or state law "controls the ownership of land, called accretion," that had been deposited gradually by the ocean on adjoining upland property.^{8/} *Hughes*, 389 U.S. at 290. Justice Stewart readily conceded that "as a general proposition...the law of real property is, under our Constitution, left to the individual States to develop and administer. And...to make changes, either legislative or judicial in its general rules of real property law," including those pertaining to the rights of riparian owners who remain subject to the "changing impact of these general state rules." *Id.* at 295. However, the State of Washington could not "take her land without just compensation," as the Supreme Court of Washington had done in

^{7/} The Amicus Pacific Legal Foundation also states that *Hughes* is the "clearest and most influential opinion of the kind" on the subject of state court actions that precipitate a sudden or unpredictable change in state law. (Motion for Leave to File And Brief Amicus Curiae of Pacific Legal Foundation In Support of Petition For Writ of Certiorari, at 5.)

^{8/} The property had been owned by the United States prior to Washington's statehood in 1889. At that time, the Petitioner (Mrs. Hughes) had a common law right to include within her title any lands that accretion had gradually built up by the movement of the tides.

terminating “the littoral rights of upland owners without compensation.” *Id.* at 296. That decision was reversed and remanded.

However, Justice Stewart had more to say:

To the extent that the decision of the Supreme Court of Washington [on the ownership issue] arguably conforms to reasonable expectations, we must of course accept it as conclusive. But to the extent that it constitutes *a sudden change in state law, unpredictable in terms of the relevant precedents, no such deference would be appropriate. For a State cannot be permitted to defeat the constitutional prohibition against taking property without due process of law by the simple device of asserting retroactively that the property it has taken never existed at all.*

* * *

The Washington court insisted that its decision was ‘not startling’. *What is at issue here is the accuracy of that characterization.*

* * *

There can be little doubt about the impact of that change upon Mrs. Hughes: The beach she had every reason to regard as hers was declared by the state court to be in the public domain. *Of course the court did not conceive of this action as a taking.*

* * *

But the Constitution measures a taking of property not by what a State says, or by what it intends, but by what it does. Id. at 296-298 citations omitted) (emphasis supplied).

Justice Stewart stated that although the State of Washington had not attempted to take the accreted lands by eminent domain, it had still effected a “retroactive transformation of private into public property—without paying for the privilege of doing so” in violation of the Due Process Clause of the Fourteenth Amendment. *Id.* at 298 (emphasis supplied).

B. The Florida Supreme Court may not defeat a littoral owner’s vested property rights by invoking new, previously non-existent rules of State substantive law, or by the artful denomination of previously unknown “background principles” of State law to create littoral rights that are “unconnected” with the shore

The aforementioned issue raised by Justice Stewart, discussed in Argument II.A., arose again a quarter-century later when Justice Scalia, joined by Justice O’Connor, dissented from the Court’s denial of a Petition For Writ of Certiorari in *Stevens v. City of Cannon Beach*, 510 U.S. 1207, 114 S. Ct. 1332 (1994). Similar to the case at bar, it involved the Oregon Supreme Court’s application of the “restrictions that background principles of the State’s law of property and nuisance already place

upon land ownership,” as discussed in *Stevens*, 114 St. Ct. at 1334 (discussing *Lucas*, 505 U.S. at 1029).

In *Stevens*, the owners of a beachfront parcel filed for a permit to build a seawall on the dry sand portion of their property. The permit was denied and an inverse condemnation action ensued. The Oregon Supreme Court affirmed the lower State court decisions in favor of the City, relying upon the “English doctrine of custom,” which applied to “land used in a certain manner.”^{2/}

In dissent, Justice Scalia noted that the Oregon Supreme Court’s reading of *State ex rel Thornton v. Hay*, 462 P.2d 671 (1969), under the background principles of *Lucas* was “unsupportable” and that *Lucas* would be a “nullity” if a state court could choose to denominate “background law,” regardless of whether it really was such, to eliminate property rights:

As a general matter, the Constitution leaves the law of real property to the States. *But just as a State may not deny*

^{2/} The doctrine of custom, an apparent background principle of Oregon law, was described by the Oregon Supreme Court as involving the following seven elements: “(1) so long that the mind runneth not to the contrary; (2) without interruption; (3) peaceably; (4) where the public use has been appropriate to the land and the usages of the community; (5) where the boundary is certain; (6) where the custom is obligatory (not left up to the individual landowners as to whether they will recognize the public’s right to access); and (7) where the custom is not repugnant to or inconsistent with other customs or laws.” *Stevens*, 114 S. Ct. at 1333, n.1.

rights protected under the Federal Constitution through the pretextual procedural rulings, neither may it do so by invoking nonexistent rules of state substantive law.

* * *

[A] State cannot be permitted to defeat the constitutional prohibition against taking property without due process of law by the simple device of asserting retroactively that the property it has taken never existed at all. *Stevens*, 114 S. Ct. at 1334 (quoting *Hughes*, 389 U.S. 290 at 296-297 (Stewart, J., concurring) (other citations omitted) (emphasis supplied).

If, in the present case, “background principles” of State law, as discussed in *Lucas* can be so easily reshaped into non-existent or unrecognizable rules of State law to wipe out vested property rights, what is to prevent creative State courts from further diluting *Lucas* by pouncing upon figments of imagined “new knowledge or changed circumstances [to] make what was previously permissible no longer so? *Lucas*, 505 U.S. at 1029.

Unfortunately, the fears expressed by Justice Stewart in *Hughes*, and by Justice Scalia in *Stevens*, have come to fruition in the case at bar. As noted in Argument I.B, supra. at 9-11, Florida Supreme Court precedents for a century adhered to the opposite approach, for example, that littoral rights are “property,” inseparable from littoral uplands (*Belvedere*, 476 So. 2d at 652); that a littoral owner owns to the line of the high water mark

(*Sand Key*, 512 So. 2d at 936); and that the littoral owner's right of access to the water includes the right to have the property's contact with the water remain intact. *Id.* The Court should not allow the Florida Supreme Court's sudden restatement of these littoral rights to stand.

CONCLUSION

The actions of the State of Florida herein, as upheld by the decision of the Florida Supreme Court in *Walton County*, have eliminated or severely diminished long-standing vested constitutional property rights of littoral owners in Florida. These include the right to accretion or reliction, the right to exclusive access from the upland to the water, the right to have one's property remain in contact with the water, and the right to an unobstructed view of the water. These vested rights created a heightened expectation and security in the property interests of the littoral owners that could not be taken without just compensation. Accordingly, the Amicus supports the arguments of the Petitioner, and requests the Court to grant the relief requested by the Petitioner.

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