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Protecting Natural Resources - Forever: The Obligations of State Officials to Uphold "Forever" Constitutional Provisions

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ARTICLE

Protecting Natural Resources – Forever: The Obligations of State Officials to Uphold “Forever” Constitutional Provisions

RACHEL E. DEMING*

This Article analyzes the attacks on a state constitutional conservation lands program since the election of a governor and state legislature opposed to environmental regulation in 2010 – a precursor to current happenings at the federal level under the Trump administration. Former Florida Governor Rick Scott and his administration have spent an average of over \$40 million a year in taxpayer money to defend and, in most cases, pay judgments, in lawsuits challenging mandates of the Florida Constitution.

I examine this issue of ignoring or deliberately violating constitutional requirements through the lens of state constitutional provisions that protect natural resources, focusing on Florida and New York. Both states have explicit and specific protections for conservation and forest lands, which differ from constitutional provisions in other states that establish policies and delegate implementation authority to state legislatures. New York adopted its Forever Wild constitutional provision in 1894, and the text of that provision has remained intact, despite attempts to amend the provision or to pass legislation that would violate it.

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In Florida, there are two constitutional provisions that protect conservation lands under the Florida Forever program. This program has widespread public support and, at its inception, had non-partisan political support as well, until Rick Scott was elected to be governor. During his tenure, there have been repeated attempts to sell or trade conservation lands protected under the Florida Constitution. Instead of spending taxpayer money to defend violations of these constitutional provisions, Florida state officials should uphold the oaths they made to “support, protect, and defend” the state constitution. Natural resource protections in the Florida and New York constitutions provide noteworthy guidance for other states to initiate constitutional amendments for similar protections. In addition, there should be personal repercussions for state officials who willfully violate these state constitutional commands and restitution of taxpayer money spent to defend unlawful behavior.

TABLE OF CONTENTS

I.	Introduction	204
II.	Florida Forever Conservation Lands Program	206
	A. Preservation 2000 and Prior Land Conservation Efforts	206
	B. The Florida Forever Constitutional Amendments	208
	C. Conservation Lands Legislation and Regulations and the Creation of Florida Forever.....	212
	D. Enforceability of Constitutional Provisions in Florida	215
	E. Unconstitutional Actions relating to Florida’s Conservation Lands.....	217
	1. Proposed Sale of “Surplus” Land	218
	2. Amendment 1 Lack of Funding and Litigation	219
	3. Using Conservation Lands for Roads and other Linear Facilities	220
III.	New York’s Forever Wild Constitutional Protection.....	224
IV.	What Citizens Can Do to Protect Natural Resources.....	226
	A. Hold Public Officials to their Oath of Office	226
	B. Propose Self-Executing Constitutional Provisions With Defined Remedies.....	227
V.	Conclusion.....	228

I. INTRODUCTION

Many state constitutions have environmental and natural resource provisions that range from establishing policies to protect the environment and natural resources to recognizing environmental quality as a basic civil right.¹ Significantly, both the Florida and New York state constitutions explicitly provide for conservation measures and forestland protection, differing from most environmental constitutional provisions that establish broad policies and simply delegate rulemaking authority to state legislatures.

Florida and New York are leaders in acquiring and designating conservation lands in efforts protect rich and abundant state natural resources. In fact, the Florida Department of Environmental Protection ("FDEP") asserts that its Florida Forever program is "the largest public land acquisition program of its kind in the United States," as the state purchased more than 2.5 million acres of land under the program and, in addition, manages another 7.5 million acres for conservation.² New York's Department of Environmental Protection ("NYSDEC") manages around 4.7 million acres of land, protected as "forever wild," with nearly 3 million acres designated as "Forest Preserves."³

In 1998, an amendment to Florida's Constitution that was introduced to protect conservation lands was approved by 72 percent of the voters.⁴ Article X, Section 18 of the Florida Constitution prohibits the disposition of conservation lands owed by the state unless there has been a determination that the property is no longer needed for conservation purposes.⁵ This constitutional provision protected lands previously acquired under legislation called Preservation 2000 and led to the enactment of the Florida Forever

1. James May & William Romanowicz, *Environmental Rights in State Constitutions*, in PRINCIPLES OF ENVIRONMENTAL CONSTITUTIONAL LAW 306, 308 (James R. May ed., 2011).

2. *Florida Forever*, FLA. DEP'T OF ENVT'L. PROT., <https://perma.cc/4AQH-MQXU>.

3. *New York's Forest Preserve*, N.Y. DEP'T OF ENVT'L. CONSERVATION, <https://perma.cc/5RRV-R4TN>.

4. *Florida Natural Resources Conservation and Fish and Wildlife Conservation Commission, Amendment 5 (1998)*, BALLOTPEDIA, <https://perma.cc/KZ2V-ZVD9> [hereinafter *Amendment 5*].

5. FLA. CONST. art. X, § 18.

program in 1999.⁶ Florida voters reiterated their overwhelming support for the Florida Forever program when they approved a constitutional amendment in 2014 that designated a portion of stamp taxes to fund the acquisition of additional conservation land.⁷

Article XIV, Section 1 of New York’s Constitution provides sweeping protection for forestlands, “commanding that these lands be “forever kept as wild.”⁸ This provision, adopted in 1894, provided constitutional protection to certain legislatively protected lands⁹ and has remained intact since that time, despite many attempts to undermine it.¹⁰

A key determining factor for enforcement of state constitutional provisions is whether they are self-executing.¹¹ New York courts held that the “forever wild” constitutional provision is self-executing.¹² Florida Supreme Court precedent establishes that Article X, Sections 18 and 28 are also self-executing.¹³ In recent years, however, Florida’s lawmakers and administrators systematically undermined the Florida Forever program by ignoring state constitutional mandates.¹⁴ Unfortunately, this is not the only area where the state’s public officials ignored Florida’s constitutional provisions. Over the past eight years, Florida taxpayers funded an

6. See FLA. STAT. § 259.105 (2018); Roy Carriker, *Florida Forever: A Program for Conservation Land Acquisition*, DEP’T OF FOOD & RESOURCE ECON., FLA COOPERATIVE EXTENSION SERV., INST. OF FOOD & AGRIC. SCI., U. OF FLA., GAINESVILLE, FLA. 1 (2002), <https://perma.cc/J3P8-RAXZ>.

7. FLA. CONST. art. X, § 28(a); see also Fla. Def. of the Env’t v. Detzner, No. 2015-CA-001423, 2018 WL 3519257, at *2 (Fla. Cir. Ct. 2018).

8. N.Y. CONST. art. XIV, § 1. Section 4 allows for further acquisitions of land to protect natural resources or preserve scenic beauty, with a designated process for disposal by the legislature if enacted by two successive sessions. See *id.*, § 4.

9. *History of DEC*, N.Y. STATE DEP’T OF ENV’T L. CONSERVATION, <https://perma.cc/YH8B-7N9F>; 9A N.Y. PRAC., ENVIRONMENTAL LAW AND REGULATION IN NEW YORK § 12:8 (2d ed.).

10. See *infra* note 114.

11. May & Romanowicz, *supra* note 1, at 309.

12. See, e.g., Ass’n for Prot. of Adirondacks v. MacDonald, 170 N.E. 902, 904 (N.Y. 1930).

13. See, e.g., Caribbean Conservation Corp., Inc. v. Fla. Fish and Wildlife Comm’n, 838 So. 2d 492, 500–01 (Fla. 2003).

14. Isadora Rangel, *Rangel: You Passed Amendment 1 in 2014 and Lawmakers Hijacked It*, FLORIDA TODAY (Dec. 28, 2017), <https://perma.cc/NF5M-7N33>; Paula Dockery, *Out of Session’s Ashes Rises Hope for Environment*, TALLAHASSEE DEMOCRAT (May 3, 2015), <https://perma.cc/AFR8-62C5>.

average of over \$40 million dollars per year in attorneys' fees and judgments against state officials who have committed constitutional violations.¹⁵

An analysis of the application of the Florida and New York constitutional provisions provides an important basis to evaluate how effective they have been, especially given the difference of 100 years between enactments of the two provisions. As New York's experience demonstrates, rather than spending taxpayer money defending lawsuits, Florida's public officials should instead focus on complying with the oaths they made to uphold Florida's Constitution¹⁶ and pursuing legitimate means to change the state constitution, for example, proposing amendments for voter approval.¹⁷ This analysis also provides guidance for framing future citizen environmental ballot initiatives.

II. FLORIDA FOREVER CONSERVATION LANDS PROGRAM

A. Preservation 2000 and Prior Land Conservation Efforts

In Florida, natural resource conservation by the state began in the 1960's. The state's rapid population growth began in the 1950's, at four percent per year, and state leaders recognized the threat that the population increase posed to Florida's "unique natural ecosystems."¹⁸ Between 1964 and 1990, the state enacted several conservation land purchase programs, and, in 1990, Governor

15. John Romano, *Rick Scott Loves Spending Your Tax Dollars to Fight His Court Battles*, TAMPA BAY TIMES (Apr. 7, 2018), <https://perma.cc/M83C-DM68>. "Florida's governor has been a one-man windfall for lawyers. Pick an amendment — any amendment — and there's a decent chance Scott has challenged its constitutional boundaries. Scott and Florida have been sued over the First Amendment. Over the Second. The Fourth and the 14th, too. Time and again, the state has engaged in lengthy, and quite often, fruitless court challenges. It's almost as if Scott doesn't care one bit about the outrageous attorney fees he's piled up." *Id.*

16. FLA. CONST. art II, § 5(b).

17. See *infra* Part IV(B).

18. Carriker, *supra* note 6, at 1.

Bob Martinez appointed a commission to study growth and the environment in Florida.¹⁹ The commission reported that development related to population growth “posed “a continuing threat to Florida’s remaining natural areas”²⁰ and concluded that “the single most effective way to accomplish large-scale gains in our environmental well-being is to substantially increase the level of funding for the state’s land acquisition programs.”²¹

The governor and state legislature responded by authorizing a \$3 billion land preservation fund for conservation land acquisitions, financed by an increase in the documentary stamp tax.²² During that period, the state purchased one million acres of conservation land, with local governments often matching state funds to protect additional land within their jurisdictions.²³

As the end of the ten-year period approached, two issues arose: (1) ensuring the continuation of the land conservation program; and (2) the sale of state-owned lands for private developments.²⁴ One attempted disposal of state-owned land in Florida’s Panhandle demonstrated the need to address these concerns.²⁵ In 1992, the state acquired over 18,000 acres of land in South Walton, Florida.²⁶ The state subsequently created a trust with a mission to assess state-owned lands for potential disposition of parcels less-suited for conservation and for potential acquisition of more valuable conservation lands.²⁷ Walton County lobbied to the state’s Land Acquisition and Advisory Council in Tallahassee, which had authority over disposition of the state land, and advocated for the sale of more land in order to increase the county’s tax base.²⁸ The Council was set to approve the sale of a significant amount of conservation lands, including the Cassine Gardens Cypress Swamp Nature

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.* at 2.

23. *Id.* at 2, 3.

24. *Id.*

25. Editorial, *Making Improvements to Our State Constitution Series*, ST. PETERSBURG TIMES, at 2D (Oct. 18, 1998) [hereinafter *Making Improvements*].

26. Tiana Larsen, *History of Conservation Land in South Walton*, THE DEFUNIAK HERALD-BEACH BREEZE (2005), <https://perma.cc/FA7R-DPHX>.

27. *Id.*

28. *Id.*

Trail, without a public hearing.²⁹ When local community members heard about the proposal, they requested a public hearing.³⁰ At the hearing, the community's significant opposition to the proposed sale resulted in excluding the Cassine Trail from the sale and the transfer of a small amount of land for governmental and civic use.³¹

B. The Florida Forever Constitutional Amendments

The Florida Constitution requires the establishment of a Constitutional Reform Commission ("CRC") every 20 years in order to consider amendments to the state constitution,³² and Florida is the only state that allows such a commission to refer proposed amendments directly to the ballot.³³ In 1997, a CRC convened and referred an amendment to the ballot that included a proposal for a new provision for "management and disposition of publicly owned conservation lands."³⁴

Clay Henderson, then-president and the Chief Executive Officer of The Florida Audubon Society and a CRC member (with co-

29. *Id.*

30. *Id.*

31. *Id.*

32. FLA. CONST. art. XI, § 2.

33. *Florida Amendment 12, Lobbying Restrictions Amendment (2018)*, BALLOTPEdia, perma.cc/8W6G-TXXL.

34. Wm. Clay Henderson & Deborah Ben-David, *Revision 5: Protecting Natural Resources*, 72 FLA. B. J. 22, 24 (1998). Revision 5, as it appeared on the ballot, stated:

NO. 5 CONSTITUTIONAL REVISION ARTICLE II, SECTION 7(a); ARTICLE IV, SECTION 9; ARTICLE VII, SECTION 11(a)-(f); ARTICLE X, SECTION 18; ARTICLE XII, SECTION 22 (Constitutional Revision Commission)

Conservation of Natural Resources and Creation of Fish and Wildlife Conservation Commission

Requires adequate provision for conservation of natural resources; creates Fish and Wildlife Conservation Commission, granting it the regulatory and executive powers of the Game and Fresh Water Fish Commission and the Marine Fisheries Commission; removes legislature's exclusive authority to regulate marine life and grants certain powers to new commission; authorizes bonds to continue financing acquisition and improvement of lands for conservation, outdoor recreation, and related purposes; restricts disposition of state lands designated for conservation purposes.

Id. at 22 (emphasis deleted).

author Deborah Ben-David), stated that the purpose of the proposal was:

[T]o guide the management and disposition of conservation lands and to protect past achievements from unraveling . . . [The proposal] assures the public that land acquired for conservation will not be easily sacrificed in the future, which would defeat the purpose for buying these lands in the first place and undermine confidence in these programs.³⁵

To impose an obligation similar to the public trust doctrine in Article X, Section 11 of the Florida Constitution governing other sovereign lands, the proposal included language that required state entities to manage conservation lands “for the benefit of the citizens of this state.”³⁶ As the authors noted, “[p]oll after poll suggests that Floridians value and desire protection of their beaches, rivers, lakes, springs, forests, and coral reefs, as well as the life they sustain. The CRC’s Revision 5 grew directly out of those sentiments as a means of protecting the state’s unique environment.”³⁷

There was widespread support for this ballot proposal. Bob Bendick, head of the Nature Conservancy, asserted that “Revision 5 is a once-in-a-generation opportunity for Floridians to express their support for conservation.”³⁸ Along with many other environmental activists, over one hundred Florida industry leaders and both gubernatorial candidates at the time, Jeb Bush and Buddy MacKay, supported the change.³⁹ In 1998, Florida voters overwhelmingly approved this amendment,⁴⁰ and Article X, Section 18 was added to the Florida Constitution:

35. *Id.* at 24.

36. *Id.*

37. *Id.* at 26.

38. *Making Improvements*, *supra* note 25.

39. Robert McClure, *Revision 5 Seeks to Preserve State Conservation Efforts*, SUN-SENTINEL (Sep. 25, 1998) <https://perma.cc/7PNU-J6QL>.

40. *See Amendment 5*, *supra* note 4; Gary Appelson, *Sea Turtle Survival League and Save the Manatee Club Take Legal Action to Ensure Constitutionally Mandated Protection of Florida’s Threatened and Endangered Sea Turtles, Manatees, and Other Marine Species*, SEA TURTLE CONSERVANCY (Aug. 2, 1999) <https://perma.cc/ZJ5V-VHHP>.

The fee interest in real property held by an entity of the state and designated for natural resources conservation purposes as provided by general law shall be managed for the benefit of the citizens of this state and may be disposed of only if the members of the governing board of the entity holding title determine the property is no longer needed for conservation purposes and only upon a vote of two-thirds of the governing board.

Until 2009, preservation of conservation lands was not a partisan issue; the Florida Forever program and its predecessor, Preservation 2000, had bipartisan support, and Florida's public officials fulfilled their constitutional duties to protect these conservation lands.⁴¹ Prior to 2009, the legislature regularly appropriated funds to acquire a significant amount of land.⁴² Starting in 2009, however, the legislature cut back on acquisition funds, to less than 5 percent of the 2008 level by 2014.⁴³

In 2013 and 2014, due to the defunding of conservation land acquisition, a coalition of groups organized a citizens' ballot initiative to amend the Florida Constitution to require the governor and legislature to fund the acquisition of conservation lands.⁴⁴ This group became an organization called Florida's Water and Land Legacy, which subsequently became the non-profit organization, Florida Conservation Voters.⁴⁵ Members of the Legacy coalition included 13 prominent state groups that acted as the steering committee,⁴⁶ along with over 100 endorsing businesses and non-profit

41. See *About the Water and Land Conservation Campaign*, FLA.'S WATER AND LAND LEGACY, <https://perma.cc/UGH5-RSSN> [hereinafter *Fla. Water & Land Campaign*].

42. *Id.*

43. *Id.*

44. *Our History*, FLA. CONSERVATION VOTERS, <https://perma.cc/BM3S-XF9U>.

45. *Id.*

46. 1000 Friends of Florida, Alachua Conservation Trust, Audubon Florida, Conservancy of Southwest Florida, Conservation Trust for Florida, Defenders of Wildlife, Florida Conservation Coalition, Florida Wildlife Federation, Rails to Trails Conservancy, Sierra Club, The Conservation Fund, The League of Women Voters of Florida and Trust for Public Land. *Non-Profit Endorsements*, FLA.'S WATER & LAND LEGACY, <https://perma.cc/2EVH-SFGX> [hereinafter *Fla. Water & Land Endorsements*].

organizations, municipal governments, and individuals.⁴⁷ Clay Henderson, one of the primary organizers, also participated in the CRC in 1997 and was an integral part of the conservation lands disposal amendment discussed above.⁴⁸

These efforts resulted in the Amendment 1 ballot proposal in the 2014 Florida elections, referred to as the Florida Water and Land Conservation Amendment.⁴⁹ The proposal required the state to spend money on conservation and recreation land acquisitions, and designated a portion of the stamp taxes collected on real estate transactions as the source for funding.⁵⁰ This amendment was approved by over 75 percent of the voters (4.2 million Floridians) in the 2014 election, and Section 28 was added to Article X of the Florida Constitution in 2015.⁵¹ This Section specifies that the designated funds shall be expended only for the following purposes:

As provided by law, to finance or refinance: the acquisition and improvement of land, water areas, and related property inter-

47. *Id.* The group transformed into the League of Conservation Voters in 2015, a non-partisan group dedicated to protecting Florida's environment and natural resources. *About*, FLA. CONSERVATION VOTERS, <https://perma.cc/3BSD-4PSG>.

48. *See Clay Henderson*, THE WATER FESTIVAL, <https://perma.cc/RX2D-CHEZ>.

49. *Fla. Water & Land Campaign*, *supra* note 41.

50. *Id.* The summary on the 2014 ballot for The Florida Water and Land Conservation Amendment was included:

Water and Land Conservation - Dedicates funds to acquire and restore Florida conservation and recreation lands.

Ballot Summary:

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

Florida Water and Conservation Initiative, Amendment 1 (2014), BALLOTPEDIA, <https://perma.cc/H72S-5C4W>.

51. *Fla. Water & Land Campaign*, *supra* note 41. 4.2 million voters comprised over 20 percent of Florida's total population at the time. *Florida Population*, WORLD POPULATION REVIEW, <https://perma.cc/A5JH-MCU8> (noting Florida's population in 2014 was 19,897,747).

ests, including conservation easements, and resources for conservation lands including wetlands, forests, and fish and wildlife habitat; wildlife management areas; lands that protect water resources and drinking water sources, including lands protecting the water quality and quantity of rivers, lakes, streams, springsheds, and lands providing recharge for groundwater and aquifer systems; lands in the Everglades Agricultural Area and the Everglades Protection Area, as defined in Article II, Section 7(b); beaches and shores; outdoor recreation lands, including recreational trails, parks, and urban open space; rural landscapes; working farms and ranches; historic or geologic sites; together with management, restoration of natural systems, and the enhancement of public access or recreational enjoyment of conservation lands.⁵²

C. Conservation Lands Legislation and Regulations and the Creation of Florida Forever

Following the 1998 constitutional amendment, the Florida Legislature enacted “The Florida Forever Act.”⁵³ This statute establishes procedures and assigns responsibility for Florida’s publicly owned conservation lands.⁵⁴ Conservation lands include all lands acquired under the Preservation 2000 program and the Florida Forever Act.⁵⁵ Under the Act, the purposes of designating conservation lands include:

- (a) To conserve and protect environmentally unique and irreplaceable lands that contain native, relatively unaltered flora and fauna representing a natural area unique to, or scarce within, a region of this state or a larger geographic area;
- (b) To conserve and protect lands within designated areas of critical state concern, if the proposed acquisition relates to the natural resource protection purposes of the designation;

52. FLA. CONST. art. X, § 28(b)(1).

53. FLA. STAT. § 259.105(1) (2018).

54. *Id.* § 259.105(2)(a)(3), (8).

55. *Id.* § 259.105(2)(c).

- (c) To conserve and protect native species habitat or endangered or threatened species, emphasizing long-term protection for endangered or threatened species designated G-1 or G-2 by the Florida Natural Areas Inventory, and especially those areas that are special locations for breeding and reproduction;
- (d) To conserve, protect, manage, or restore important ecosystems, landscapes, and forests, if the protection and conservation of such lands is necessary to enhance or protect significant surface water, groundwater, coastal, recreational, timber, or fish or wildlife resources which cannot otherwise be accomplished through local and state regulatory programs;
- (e) To promote water resource development that benefits natural systems and citizens of the state;
- (f) To facilitate the restoration and subsequent health and vitality of the Florida Everglades;
- (g) To provide areas, including recreational trails, for natural resource-based recreation and other outdoor recreation on any part of any site compatible with conservation purposes;
- (h) To preserve significant archaeological or historic sites;
- (i) To conserve urban open spaces suitable for greenways or outdoor recreation which are compatible with conservation purposes; or
- (j) To preserve agricultural lands under threat of conversion to development through less-than-fee acquisitions.⁵⁶

56. *Id.* § 259.032(2) (2018).

The Acquisition and Restoration Council (“ARC”), which resides within the FDEP, is responsible for both acquisition and management of conservation lands.⁵⁷

The Florida Forever Act focuses on the acquisition process. It mentions disposal of conservation land in only one provision, which delegates rulemaking authority for disposal of conservation lands to the Board of Trustees of the Internal Improvement Trust Fund (“the Board”).⁵⁸ This statute does not mention or incorporate the constitutional language for the disposition process specified in Section 18 of Article X.

The regulations that were enacted to implement the Florida Forever Program establish procedures for the acquisition of conservation lands, and also add provisions permitting linear facilities such as roads and land exchanges.⁵⁹ The regulations, however, do not refer to the constitutional process required for disposal.

There is additional legislation that governs the disposition of state-owned lands, although it is not referenced in the Florida Forever Act. Section 253.0341 of the Florida Statutes requires the Board to determine which state-owned lands may be designated as surplus:

- (1) The board of trustees shall determine which lands, the title to which is vested in the board, may be surplus. For all conservation lands, the Acquisition and Restoration Council shall make a recommendation to the board of trustees, and the board of trustees shall determine whether the lands are no longer needed for conservation purposes. If the board of trustees determines the lands are no longer needed for conservation purposes, it may dispose of such lands by an affirmative vote of at least three members. In the case of a land exchange involving the disposition of conservation lands, the board of trustees must determine by an affirmative vote of at least three members that the exchange will result in a net positive conservation benefit . . .

57. *Id.* § 259.105(c) (2018); *Acquisition and Restoration Council (“ARC”),* FLA DEP’T OF ENVTL. PROT., <https://perma.cc/39YB-PUEN>.

58. FLA. STAT. § 259.105(19) (2018).

59. *See* FLA. ADMIN. CODE ANN. R. 62-818.001 (2013).

- (2) For purposes of this section, all lands acquired by the state before July 1, 1999, using proceeds from Preservation 2000 bonds, the former Conservation and Recreation Lands Trust Fund, the former Water Management Lands Trust Fund, Environmentally Endangered Lands Program, and the Save Our Coast Program and titled to the board of trustees which are identified as core parcels or within original project boundaries are deemed to have been acquired for conservation purposes.⁶⁰

There is an additional provision in the Preservation 2000 statute that discusses the requirements for determining when land acquired with Preservation 2000 funds may be surplus:

- (b) Before land acquired with Preservation 2000 funds may be surplus as required by s. 253.0341 or determined to be no longer required for its purposes under s. 373.056(4), as applicable, there shall first be a determination by the board, or, in the case of water management district lands, by the owning water management district, that such land no longer needs to be preserved in furtherance of the intent of the Florida Preservation 2000 Act.⁶¹

Section 373.056(4) applies to lands managed by water management districts in Florida and expressly limits the ability to grant utility easements “for the limited purpose of obtaining utility service to district property under such terms and conditions as the governing board of such district may determine.”⁶²

D. Enforceability of Constitutional Provisions in Florida

In *Caribbean Conservation Corporation, Inc. v. Florida Fish and Wildlife Commission*, the Florida Supreme Court interpreted another provision incorporated into the Florida Constitution by the

60. FLA. STAT. § 253.0341(1)–(2) (2018). This section was added after the constitution was amended to include Article X, Section 18. *See supra* Part II(b).

61. *Id.* § 259.101(5)(b) (2018).

62. *Id.* § 373.056(4) (2018).

same amendment that added Article X, Section 18.⁶³ In referencing the requisite standard of review, the court noted: “[t]he question presented concerning whether the challenged statutes are constitutional is a question of law which we review de novo.”⁶⁴ Further, the court “agreed with the petitioners that [a]ny inquiry into the proper interpretation of a constitutional provision must begin with an examination of that provision’s explicit language.”⁶⁵ In addition to looking to explicit language, the court in *Caribbean Conservation* emphasized the importance of looking to the intent of the framers and voters, noting that it previously expressed this principle of constitutional interpretation in *Gray v. Bryant*:

The fundamental object to be sought in construing a constitutional provision is to ascertain the intent of the framers and the provision must be construed or interpreted in such manner as to fulfill the intent of the people, never to defeat it. Such a provision must never be construed in such manner as to make it possible for the will of the people to be frustrated or denied.⁶⁶

The final important principle that must be addressed when interpreting constitutional provisions is determining whether the provision is self-executing.⁶⁷ The Florida Supreme Court has opined that “[w]here the Constitution prescribes the manner in which something may be accomplished, the means are exclusive.”⁶⁸

Applying these principles of constitutional interpretation—plain language, intent, and self-execution—to Sections 18 and 28 of Article X of Florida’s Constitution provides a clear roadmap for

63. *Caribbean Conservation Corp., Inc.*, 838 So. 2d at 500–01.

64. *Id.* at 500.

65. *Id.* at 501 (quoting *Fla. Soc’y of Ophthalmology v. Fla. Optometric Ass’n*, 489 So. 2d 1118, 1119 (Fla.1986)); *see also* *Edwards v. Thomas*, 229 So. 3d 277, 283 (Fla. 2017) (The court noted that when looking at a constitutional provision to determine legislative intent, the plain language governs that interpretation. If the provision contains no qualifying provision, the court applies “the unequivocal meaning” of the plain language.”).

66. *Caribbean Conservation Corp., Inc.*, 838 So. 2d at 501; *see* *Gray v. Bryant*, 125 So. 2d 846, 852 (Fla. 1960); *see also* *Amos v. Mathews*, 126 So. 308, 316 (Fla. 1930) (“The object of constitutional construction is to ascertain and effectuate the intention and purpose of the people in adopting it. That intention and purpose is the ‘spirit’ of the Constitution—as obligatory as its written word.”).

67. *May & Romanowicz*, *supra* note 1, at 309.

68. *Fla. Bar v. Sibley*, 995 So. 2d 346, 349 (Fla. 2008).

courts to determine whether legislative or administrative actions by state or local officials should be overturned as unconstitutional. To date, Florida courts have not issued any decisions involving the scope of Article X, Section 18, but the provision states that the governing body of the titleholder must make a determination that “the property is no longer needed for conservation purposes.”⁶⁹ The constitutional language is clear and does not permit additional factors to be considered in the ultimate determination. In addition, this constitutional provision governs all conservation lands held by the state, including land acquired prior to incorporation of the amendment in 1999 because the provision addresses the process for disposal of conservation lands, not acquisition.⁷⁰

Similarly, Article X, Section 28 has unambiguous language and clearly defined procedures for funding the acquisition of conservation lands. This provision is currently being challenged in court as discussed below.⁷¹

E. Unconstitutional Actions relating to Florida’s Conservation Lands

Actions taken by Former Governor Rick Scott’s administration and local governments, as well as laws passed by the state legislature, which include attempts to sell off conservation lands, diversion of funds constitutionally designated for conservation land acquisition and protection, and support for highways through the

69. See FLA. CONST. art. X, § 18; *see also* *Graham v. Estuary Properties, Inc.*, 399 So. 2d 1374, 1377–78 (Fla. 1981) (governing board denied development permit to environmentally sensitive lands and developer challenged denial arguing denial violated permitting statute but court noted that since legislature placed no value, but did enumerate factors, the determination was valid so long as it was the enumerated factors that were balanced against each other by the governing board).

70. See FLA. CONST. art. X, § 18. Constitutional provisions are “presumed to operate prospectively.” *State v. Lavazzoli*, 434 So. 2d 321, 323 (Fla. 1983) (upholding the guilty verdict of a probationer who was found guilty of violating his parole due to an inability to exclude certain evidence, even when a Florida Constitutional amendment that was enacted after his conviction would have permitted the exclusion of the damning evidence). Therefore, supporters of conservation land preservation would use the constitution against a government action (such as disposal of a forest) that would happen post-enactment, unlike the probationer in *Lavazzoli*, who attempted to use the constitution against a government action already taken pre-enactment.

71. See *infra* notes 84, 88.

middle of conservation lands, have undermined the protection of Florida's natural resources. Each of these unconstitutional actions is discussed below.

1. Proposed Sale of "Surplus" Land

In 2013, state legislature passed a bill calling for the sale of certain conservation lands for the purpose of funding the acquisition of new conservation lands.⁷² The FDEP created an initial list of potential sale properties, which generated significant opposition.⁷³ The group responsible for creating the list within FDEP admitted that they felt the "agency was rushing through the job."⁷⁴ Further, it was not clear what factors were considered when the list was created in the first place because the process FDEP used to evaluate properties was not initially disclosed.⁷⁵ This initial list generated significant opposition particularly from environmental groups, local governments, and individuals. Margaret Broussard, an individual who helped to raise money to purchase land on the sale list, asserted that the list was "an outrage" and explained that "[t]he state itself picked those parcels . . . To me the entire concept of selling off conservation land to buy conservation land is not a good idea . . ."⁷⁶ As opposition mounted, FDEP began to take properties off the list,⁷⁷ and ultimately, FDEP terminated the entire process early in 2014, with a terse announcement and little explanation.⁷⁸ This process may have influenced the voters to support the amendment designating funding for additional conservation land acquisitions discussed below.

The FDEP process raised a question that has never addressed by the Florida courts: whether Article X, Section 18 of the Florida Constitution prohibits exchanges of conservation lands. Florida

72. S.B. 1500, Appropriations Comm. (Fla. 2013) [hereinafter General Appropriations Act]. The League of Women Voters of Florida retained the Barry Law School Environmental and Earth Law Clinic, which the author directs, to work on this issue.

73. Craig Pittman, *List of surplus state park land raises questions, outrage*, TAMPA BAY TIMES (Sept. 3, 2013), <https://perma.cc/R98J-NAG7>.

74. *Id.*

75. *Id.*

76. *Id.* (internal quotations omitted).

77. *Id.*

78. Memorandum from FDEP to Interested Parties on State Conservation Land Assessment (Mar. 28, 2014), <https://perma.cc/JX93-6RKG>.

Statute 253.42 provides an underlying basis for proposals of selling conservation lands to acquire other conservation lands and permits the Board of the Internal Improvement Trust Fund to exchange lands, including conservation lands, under certain conditions.⁷⁹ Yet, Section 18 clearly prohibits the disposal of conservation land unless that land no longer has conservation value.⁸⁰ An exchange would constitute a disposal,⁸¹ and therefore appears to be prohibited as long as the property has some conservation value.

2. Amendment 1 Lack of Funding and Litigation

Despite the addition of the Article X, Section 28 to the Florida Constitution, recent state legislators and former Governor Rick Scott have attempted to circumvent its requirements. Every year, the state has appropriated very few funds for conservation land acquisition; instead, the money has been used to pay for budget items such as agency operational expenses.⁸² As one commentator stated, “[a]s if in an act of defiance against voters’ decision, [the Florida Legislature] defunded Florida Forever in the 2017 legislative session after providing meager funding for it in previous years.”⁸³

Several environmental groups and an individual sued the Florida state legislature and several state administrative officers, alleging that four state agencies improperly diverted funds to pay for unauthorized expenses.⁸⁴ The trial court judge held that the plain language of the constitutional provision requires the creation of a trust fund:

To acquire conservation lands or other conservation property interests, as defined by [Article X, Section 28], that the State of

79. FLA. STAT. § 253.42(1) (2018).

80. See FLA. CONST. art. X, § 18.

81. See *Dispose Of*, MERRIAM-WEBSTER DICTIONARY, <https://perma.cc/DD5Q-UWZH> (disposal includes transfer of control); see also *Disposition*, BLACK’S LAW DICTIONARY (10th ed. 2014) (“The act of transferring something to another’s care or possession, esp. by deed or will; the relinquishing of property”).

82. See Rangel, *supra* note 14.

83. *Id.*

84. Fla. Wildlife Fed’n, Inc., v. Negron, No. 2015-CA-001423, slip op. at 2 (Fla. Cir. Ct. June 28, 2018).

Florida did not own on the effective date of that amendment, and thereafter, to improve, manage, restore natural systems thereon, and enhance public access or enjoyment of those lands.⁸⁵

Enforcing Article X, Section 28, the court prohibited the appropriations for non-conservation purposes and ultimately ordered that no appropriations from the trust fund be made to “any agency or other entity that receives funding from any other source, including General Revenue,” unless there is clear language limiting the use of such funds.⁸⁶ The court also declared several other appropriations made during 2015 and 2016 unconstitutional.⁸⁷ The defendants appealed this decision to the First District Court of Appeals.⁸⁸

3. Using Conservation Lands for Roads and other Linear Facilities

Proposals at the county level can also significantly affect the preservation of Florida’s natural resources. Recent developments regarding the Split Oak Forest Environmental Protection Area, a lauded innovative initiative created and funded in 1992 to protect Florida’s natural resources,⁸⁹ demonstrate the pressures caused by development economics.⁹⁰

The Central Florida Expressway Authority (“CFX”), a state agency created by the Florida state legislature, is responsible for building and maintaining a regional transportation network for five Central Florida counties.⁹¹ Recently, CFX proposed to route a

85. *Id.* at 7.

86. *Id.*

87. *Id.* at 8.

88. Ryan Dailey, *Florida Legislators Appeal Amendment 1 Lawsuit, Advocates’ Attorney Wants Case In Supreme Court*, WFSU PUBLIC MEDIA (July 30, 2018), <https://perma.cc/4H67-9YRD>.

89. Application for Preservation 2000 Program from Orange & Osceola Counties, Fla., Applicants, to Florida Communities Trust, FDEP, (1991) [hereinafter 2000 Program Application].

90. The League of Women Voters of Florida retained the Barry Law School Environmental and Earth Law Clinic, which the author directs, to work on this issue.

91. *About CFX*, CENTRAL FLA. EXPRESSWAY AUTH., <https://perma.cc/5VZK-Z9FT> (Brevard, Lake, Orange, Osceola and Seminole counties).

major highway extension, the Osceola Parkway Extension, through the Split Oak Forest Wildlife and Environmental Area (“SOFWEA”) in Central Florida.⁹² SOFWEA is owned by both Orange and Osceola Counties and is managed by the Florida Fish and Wildlife Commission through an agreement with the counties.⁹³

Orange and Osceola counties created SOFWEA in 1991 as an innovative joint venture to protect wildlife and wetlands in the increasingly urban environment of the two counties.⁹⁴ The proposal included designating a significant area of contiguous uplands and wetlands in a rural area as a conservation area and mitigation bank to provide for wildlife habitat protection, and the counties received Preservation 2000 funds based on their demonstrated commitment to this conservation project.⁹⁵ In their application for funding from the Florida Communities Trust (“FCT”) under the Preservation 2000 program, the counties explained that the creation of this protection area was consistent with their current and future development plans.⁹⁶ The counties also explained that this area was adjacent to existing and planned conservation lands

The pressure for development in one of the fastest growing regions of the country,⁹⁷ however, is threatening this preserve. In 2016, Tavistock Development Company announced plans for a 24,000-acre development on lands owned by the Mormon Church, some of which adjoin Split Oak.⁹⁸ The development plans for this new community include a major new parkway bisecting

92. Veronica Brezina, *Here’s 2 Spots Where the Osceola Parkway Extension May Be Built Both Are Controversial*, ORLANDO BUS. J. (Feb. 9, 2018) <https://perma.cc/WCT4-4FUA>; *Project Development & Environment (“PD&E”) Study: Osceola Parkway Extension*, CENTRAL FLA. EXPRESSWAY AUTH., <https://perma.cc/FZK7-67XB>.

93. *Split Oak Forest—Habitat and Management*, FLA. FISH & WILDLIFE CONSERVATION COMM’N, <https://perma.cc/3R26-UP5W>.

94. See 2000 Program Application, *supra* note 89, at 32.

95. *Id.* at 38–39.

96. *Id.* at 82–100.

97. Mike Schneider, *Central Florida Cities Among Fastest Growing in U.S.*, U.S. NEWS (Apr. 19, 2019), <https://perma.cc/6B2Z-9AVX>.

98. Scott Powers, *New 24,000-acre development announced for Mormon lands in Orange, Osceola counties*, FLA. POLITICS (Mar. 22, 2016) <https://perma.cc/ZKJ7-EVYG>; see also Kevin Spear, *Beachline’s new exit to open rural Orange and Osceola to development*, ORLANDO SENTINEL (Mar. 9, 2018), <https://perma.cc/KQ39-4QD6>.

SOFWEA.⁹⁹ Tavistock and Deseret Ranches, the Mormon Church entity that owns the land, have been lobbying the Central Florida Expressway Authority and local governmental authorities for this parkway to go through SOFWEA.¹⁰⁰

On May 2, 2018, Mr. Fred Hawkins, in his capacity as Chair of the Osceola Board of County Commissioners, wrote a letter to Mr. Jim Zboril, President of Tavistock Development Company,¹⁰¹ responding to Mr. Zboril's April 13, 2018 letter which set forth certain conditions that included obligating Osceola County and its Board of Commissioners to "[l]ead a public process (both local and state) to get the associated land in the Split Oak Forest released for right-of-way [for the Parkway extension]."¹⁰² Mr. Hawkins stated that "[i]t is the consensus of the Osceola County Commission that we support and will act on the conditions outlined in your letter."¹⁰³

This action by Osceola County undermines the commitments the county made to acquire funds to purchase the property for SOFWEA. When Orange and Osceola counties jointly applied for state conservation funds to acquire SOFWEA, they described the SOFWEA as a "long-term, permanent protection of entire ecosystems" and "an innovative mechanism for natural resources protection."¹⁰⁴ Rather than create "small islands of habitat" that end up being incapable of supporting certain wildlife populations, it was

99. Brian McBride, *Residents still fighting to save Split Oak*, OSCEOLA NEWS-GAZETTE (Jan. 23, 2018), <https://perma.cc/HY24-CYWF>. A map of the development with the proposed parkway extension can be found on the Sunbridge website. See *Map of Proposed 24,000 Acre Development*, SUNBRIDGE, <https://perma.cc/R759-J5S7>.

100. McBride, *supra* note 99.

101. Charlie Reed, *Osceola Officials Exploring Ways to Amend Protections on Split Oak Forest*, OSCEOLA NEWS-GAZETTE (May 12, 2018), <https://perma.cc/5D7S-VDSZ>.

102. Charlie Reed, *Commission to Help Tavistock with Split Oak Road*, OSCEOLA NEWS-GAZETTE (Apr. 21, 2018), <https://perma.cc/5EQ2-2JHY>.

103. Letter from Fred Hawkins, Jr., Osceola County Board of County Commissioners, to Jim Zbroli, Tavistock Development Company, on file with the Osceola County Board of County Commissioners (May 2, 2018). The agreement made by Osceola County to provide support Tavistock has been challenged as a violation of Florida's open-government requirements, called the Sunshine Law, and is currently being litigated in court. Charlie Reed, *Judge denies Osceola County's motion to dismiss lawsuit filed by Split Oak group*, OSCEOLA NEWS-GAZETTE (Apr. 20, 2019), <https://perma.cc/AX6J-4DYP>.

104. 2000 Program Application, *supra* note 89, at 43.

the counties' objective to provide a better alternative for "continued long-term protection of wetlands and wildlife" by designating a large tract of land in a rural area for conservation purposes.¹⁰⁵ Specifically, SOFWEA was designed to "maximize[e] the habitat value of the site for the benefit of species such as the gopher tortoise, Florida mouse, gopher frog, Sherman's fox squirrel, and the red-cockaded woodpecker" and to have all management activities "evaluated in terms of the anticipated impact of the proposed action on listed wildlife within the park."¹⁰⁶

A major highway through SOFWEA would clearly destroy the its vital habitat-protection function. Conservation manager of SOFWEA, the Fish and Wildlife Conservation Commission ("FWC"), performed an extensive review of SOFWEA in 2016 and concluded:

The evaluation of SOFWEA by FWC has determined that ***all portions of the area** are being managed and operated for the original purposes of acquisition, and remain integral to the continued conservation of important fish and wildlife resources*, and continue to provide quality fish and wildlife resource based public outdoor recreational opportunities. Therefore, ***no portion** of the SOFWEA is recommended for potential surplus review.*¹⁰⁷

As discussed above, under the Florida Constitution, control over conservation lands cannot be transferred unless there is a determination that the land no longer serves a conservation purpose.¹⁰⁸ Because SOFWEA clearly retains conservation value, it is impossible to make this determination, and therefore, the proposal

105. *Id.* at 22.

106. *Id.* at 33.

107. FLA. FISH & WILDLIFE CONSERVATION COMM'N, A MANAGEMENT PLAN FOR SPLIT OAK FOREST WILDLIFE AND ENVIRONMENTAL AREA 2017 – 2027 56 (2016), <https://perma.cc/5LDV-C7T3> (emphasis added). There are similar statements from both Orange and Osceola county authorities affirming the conservation purposes provided by SOFWEA.

108. *See supra* Part II(e)(1). Disposal of land includes transfer of control; *see also Dispose of*, *supra* note 81; FLA. ADMIN. CODE ANN. R. 62-818.015 (2010) (Requesting a linear facility, such as a road, is subject to approval by the agency supervising conservation lands, the Florida Conservation Trust.). Therefore, this provision applies to the proposed grant of a right-of-way for the Parkway extension to CFX.

to build a highway through SOFWEA is in violation of Article X, Section 8 of Florida Constitution.

III. NEW YORK'S FOREVER WILD CONSTITUTIONAL PROTECTION

In 1895, New York enacted a constitutional amendment that is comparable to Article X, Section 8 of the Florida Constitution and is known as the Forever Wild clause.¹⁰⁹ Noted as a “ground-breaking provision,”¹¹⁰ the Forever Wild clause protects two vast tracts of almost three million acres of forested land in New York, including the Adirondack Forest Preserve and the Catskill Forest Preserve.¹¹¹ In fact, in 1997, one year prior to Floridians adopting Article X, Section 18, the Forever Wild clause was “generally regarded as the most important and strongest state land conservation measure in the nation.”¹¹²

The noteworthy initial two sentences of Article XIV, Section 1 have remained untouched since enactment in 1894:¹¹³

The lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed.¹¹⁴

Further, attempts to undermine the sweeping protections of the Forever Wild clause have been consistently rejected by New York voters.¹¹⁵ Any encroachments on the forest preserve lands have required voter-approved constitutional amendments, and the

109. Helms v. Diamond, 349 N.Y.S.2d 917, 921 (1973).

110. N.Y. STATE BAR ASSOC., REPORT AND RECOMMENDATIONS CONCERNING THE CONSERVATION ARTICLE IN THE STATE CONSTITUTION (ART. XIV) 1–2 (2016) [hereinafter as NYSBA REPORT].

111. *Id.* at 10 n.33

112. *Id.* at 1–2 (quoting William R. Ginsberg, *The Environment, in DECISION 1997: CONSTITUTIONAL CHANGE IN NEW YORK* 318 (Gerald Benjamin & Henrik N. Dullea eds., 1997)).

113. *See id.* at 2.

114. N.Y. CONST. art. XIV, § 1. §

115. *See* NYSBA REPORT, *supra* note 110, at 3.

only successful decisions to remove or exchange land were narrowly tailored to meet very specific purposes with carefully considered impacts.¹¹⁶ Even construction and maintenance of highways and bridges have required specific constitutional amendments until the passage of the most recent amendment to Article XIV.¹¹⁷ In 2017, New York voters passed an amendment that created a land bank of up to 250 acres of forest preserve land eligible for use by local governments for infrastructure, recreation needs, and public health and safety purposes and concerns.¹¹⁸ As a result of these numerous amendments, Article XIV, Section 1 is the most amended section of the New York State Constitution.¹¹⁹

Further, voters adopted Section 5 in 1938, which provides for enforcement of Article XIV:

A violation of any of the provisions of this article may be restrained at the suit of the people or, with the consent of the supreme court in appellate division, on notice to the attorney-general at the suit of any citizen.¹²⁰

In 1930, the Forever Wild clause was tested in New York's highest court, the Court of Appeals, when the state sought to build a bobsled run through the Forest Preserve within the Adirondacks for the 1932 Lake Placid Olympics.¹²¹ To facilitate the construction, the state legislature passed a law that permitted the removal of an estimated 2,500 trees for clearing of about four and one-half acres.¹²² While noting that four and one-half acres of over 1.9 million protected acres seemed insignificant, the court reasoned:

116. *Id.* at 3, 17 (construction of a road as a World War I memorial and ski trails on Whiteface, Belleayre, Gore, South, and Peter Gray Mountains).

117. *See, e.g., Ass'n for Prot. of Adirondacks*, 170 N.E. at 904 (noting that the clearing of trees, even for the building of roads, required constitutional amendments in 1918 and 1927).

118. Jesse McKinley, *New York Voters Reject a Constitutional Convention*, N.Y. TIMES (Nov. 7, 2017), <https://perma.cc/FX6G-6U9T>; *New York Proposal 3, Forest Preserve Land Bank Amendment (2017)*, BALLOTPEDIA, <https://perma.cc/5VVH-QS5A>.

119. NYSBA REPORT *supra* note 110, at 4.

120. N.Y. CONST. art. XIV, § 5.

121. *Ass'n for Prot. of Adirondacks*, 170 N.E. at 903–04.

122. *Id.* at 903.

However tempting it may be to yield to the seductive influences of outdoor sports and international contests, we must not overlook the fact that constitutional provisions cannot always adjust themselves to the nice relationships of life. "The framers of the Constitution, as before stated, intended to stop the willful destruction of trees upon the forest lands, and to preserve these in the wild state now existing; they adopted a measure forbidding the cutting down of these trees to any substantial extent for any purpose."¹²³

Using the force of the Forever Wild clause, the Court of Appeals held that the law permitting construction of the bobsled slide and the destruction of trees was unconstitutional.¹²⁴

IV. WHAT CITIZENS CAN DO TO PROTECT NATURAL RESOURCES

A. Hold Public Officials to their Oath of Office

All state and local public officials are required to take an oath of office.¹²⁵ These oaths require officials to uphold the Constitution of the United States and the constitution of the state they will serve.¹²⁶ For example, in Florida, state and county officers swear or affirm that they "will support, protect, and defend the Constitution and Government of the United States and of the State of Florida . . ."¹²⁷

As discussed above, however, some Florida governmental officials have flagrantly violated this oath with respect to upholding conservation land constitutional protections, and this disregard is particularly egregious because the Florida voters have made it clear that they want the state's natural resources protected.¹²⁸ Citizens should not be forced to bring claims against public officials to

123. *Id.* at 905.

124. *Id.*

125. David J. Shestokas, *The U.S. Constitution and Local Government*, DAVID J. SHESTOKAS (Jan. 7, 2014), <https://perma.cc/9Q6E-CU26>.

126. *See, e.g.*, FLA. CONST. art. II, § 5(b) (1968).

127. *Id.*

128. *See supra* Part II(e).

enforce Florida's constitution, especially when these citizens' taxpayer dollars end up funding hefty legal bills to defend such constitutional violations.

B. Propose Self-Executing Constitutional Provisions With Defined Remedies

The legal way to achieve changes to state constitutions is to make constitutional proposals with which citizens agree.¹²⁹ Because an increasing number of state officials have tried to circumvent or ignore constitutional provisions,¹³⁰ the decisions by state high courts demonstrate the importance of drafting ballot proposals that articulate a right and the intent of citizens who support the proposal.¹³¹ The ballot language gives guidance to officials in implementing their duties and to courts when they are called upon to adjudicate whether state officials are complying with their obligations.¹³²

Equally important is drafting constitutional amendments that address what James May, perhaps the nation's foremost expert in state constitutional environmental law, calls the "constellation of issues" that surround the right to adequate environmental protections, including "the nature of the right, the meaning of 'environment,' whether the right is self-executing, who may vindicate the right, who may be held accountable for constitutional breach and for what, and the standard of review for identifying an infringement of a right to a quality environment."¹³³ For example, New York's Forever Wild clause is not only self-executing, but also clearly defines who may bring action and for what.¹³⁴ The two Florida Forever provisions define the processes for implementation

129. *Amending State Constitutions*, *supra* note 109.

130. *Id.*

131. *See supra* Parts II(d) and III. *See, e.g., Caribbean Conservation Corp., Inc.*, 838 So. 2d at 500–01; *Gray*, 125 So. 2d at 852; *Ass'n for Prot. of Adirondacks*, 170 N.E. at 903–04.

132. *Id.*

133. May & Romanowicz, *supra* note 1, at 307.

134. N.Y. CONST. art. XIV, § 5 ("A violation of any of the provisions of this article may be restrained at the suit of the people or, with the consent of the supreme court in appellate division, on notice to the attorney-general at the suit of any citizen.").

sufficiently for self-execution, but they do not specify what remedies are available.¹³⁵

The deficiency in these provisions, however, is the lack of personal accountability for deliberate and egregious violations of constitutional provisions by public officials. These officials use public funds to pay for legal expenses for clear violations, often appealing decisions with adverse decisions. Until there is a way to hold these officials accountable, too many public officials will continue to ignore their obligations to uphold both the United States Constitution and state constitutions.

V. CONCLUSION

An overwhelming majority of voters throughout the United States continue to support the protection of natural resources, as demonstrated by the citizens of New York and Florida through votes to enact constitutional amendments that protect and conserve land and forests. Public officials at all levels of government must respect decisions of their constituents and not waste taxpayer money on governmental actions that violate federal and state constitutions. The way to address constitutional change is through proposing amendments that are approved by the voters.

135. *See supra* Parts II(d) and (e)(2).