



Florida Constitution Revision Commission **PROPOSAL 23** Florida Chamber of Commerce **STAFF ANALYSIS**

Proposal 23 is one of the six public proposals that have been taken up by members of the Constitution Revision Commission. This proposal creates a series of new and ambiguous rights. The relevant portion of the proposal is as follows: "Every person has a right to a clean and healthful environment, including clean air and water, control of pollution, and the conservation and restoration of the natural, scenic, historic, and esthetic values of the environment as provided by law. Any person may enforce this right against any party, public or private, subject to reasonable limitations, as provided by law."

The proposal would create a new cause of action for any person to sue any party, public or private, for violating these new undefined rights.

Florida Chamber of Commerce President Mark Wilson has already expressed the business community's opposition to this proposal: "[T]his constitutional proposal will impose opaque demands on Florida's sustainable growth as well as become a vehicle for a potentially limitless number of lawsuits against local employers. The creation of legal liability contained in this proposal is far too expansive, which would open the door to furious citizens and other non-Floridians, bringing nebulous lawsuits against community consensus projects."

"The Florida Constitution should be a welcome sign for our great state – not amended to being a closed for business billboard. The Florida Chamber of Commerce asks you to vote against this shortsighted proposal to ensure that the next generation has as much opportunity as the last."

MARK WILSON
President and CEO
Florida Chamber of Commerce

From the perspective of the Florida Chamber of Commerce, this proposal has several fatal flaws in its construction:

1. The proposal is not appropriate for the Constitution because the new rights are unclear. Amendments that confer new rights or that are aspirational in nature are rare in Florida's Constitution. Any new undefined right will create significant uncertainty as to what currently lawful activity will become unlawful.

2. The proposal is unnecessary. Florida's Constitution already protects the environment in Article II, Section 7. An amendment to the Constitution is a serious and nearly permanent action. Amendments to the Constitution should be reserved for those instances where the typical checks and balances of our government are unable to bring about a strongly and broadly desired and comprehensively defined public policy if left to their own constitutional boundaries. This is not a strongly and broadly desired public policy nor is it concisely definite. Nor is it in response to a need that has not been adequately addressed by the existing branches of government. Florida's legislative and executive branches have passed many comprehensive measures on the environment. Florida is also involved in federal litigation to protect its environmental resources from other states. This amendment could place the policymaking of environmental programs out of the hands of experts and elected officials and into the hands of plaintiff attorneys and political special interest.

DID YOU KNOW?

Florida's bottom-five legal climate is an open invitation for "gotcha" lawsuits.

3. The proposal opens the door to limitless lawsuits. The proposal creates a constitutional cause of action for any person to sue any party, public or private, for violating these new rights. This amendment appears to have no constitutional limitation on whether an individual needs standing to sue under this provision. The amendment appears to allow an individual to sue without showing that an actual harm was suffered by the plaintiff. The amendment appears to allow out-of-state residents to bring these lawsuits. The amendment could lead to the unraveling of careful balances of private property right interests enacted by the

Florida Legislature, such as the Right to Farm Act. With these significant questions unanswered, this proposal will create more uncertainty and litigation. The trial lawyers on the CRC will likely champion this proposal as it's good for their business and bad for Florida's environment and economy.

The Florida Chamber of Commerce has consistently opposed measures that create nebulous regulations on businesses or establish even more unneeded legal uncertainty on Florida's job creators. Therefore, the Florida Chamber opposes Proposal 23.

FLORIDA
CHAMBER
of Commerce

SECURING FLORIDA'S FUTURE