

CONSTITUTIONAL AMENDMENT FULL TEXT

Ballot Title: Right to Clean and Healthy Waters

Ballot Summary: This amendment creates an enforceable, fundamental right to clean and healthy waters, authorizing a person to sue for equitable relief when a State executive agency, by action or inaction, allows harm or threat of harm to Florida waters. This amendment provides for strict judicial scrutiny of such action or inaction; adds to available remedies; identifies affected constitutional provisions; provides for enforcement; defines terms; and requires attorney's fees and costs to prevailing plaintiffs.

Article and Section Being Created: Article I, Created: Section 28

Full Text of the Proposed Amendment: SECTION 28. Right to Clean and Healthy Waters.—

(a) PURPOSE. Clean and healthy waters promote important public interests, including health, prosperity, and quality of life; safe drinking water; scenic beauty and recreational activities; fishing and harvesting; thriving populations and diverse communities of native fish and wildlife; aquatic ecosystem services including carbon storage, water filtration, and risk mitigation for drought, erosion, and floods; and economic interests, business opportunities, and enjoyment of property throughout the State. The purpose of this Section is to advance these public interests by creating an enforceable, fundamental right to clean and healthy waters pursuant to the people's inherent political power in Article I, Section 1 of this Constitution.

(b) DECLARATION OF RIGHT. The people hereby create this fundamental right to clean and healthy waters.

(c) HARM PROHIBITED. It shall be considered a violation of the right to clean and healthy waters for a State executive agency to allow harm or threat of harm to Florida waters by action or inaction, such as by regulation, rule, unadopted rule, plan, standard, permit, certificate, practice including management practice, activity, agreement, memorandum of understanding, order, waiver, variance, or by enforcement or other action delayed or withheld.

(d) ENFORCEMENT. A person, as defined herein, shall have standing to bring a civil action in a court of competent jurisdiction to seek equitable remedies, such as declaratory and injunctive relief, against a State executive agency due to its action or inaction that allows harm or threat of harm to Florida waters. A plaintiff shall not be required to exhaust administrative remedies or to allege special injury different in kind from the general public at large. A plaintiff shall not be subject to filing fees or court costs in excess of those imposed for general civil actions. Any claim under this Section shall be considered de novo and shall be assessed on a preponderance of the evidence. Because a claim under this Section is based on a fundamental right, strict scrutiny shall apply, wherein a State executive agency may raise an affirmative defense that its action or inaction promoted a compelling state interest and was narrowly tailored to advance that interest by the least intrusive means. That another entity contributed to the harm or threat of harm does not excuse a violation of this Section. Deference shall be given to the best available scientific evidence. A prevailing plaintiff shall be entitled to appropriate equitable relief to redress the violation and to reasonable attorney's fees and taxable costs. The remedies provided by this Section are additional and cumulative to available remedies under other laws.

(e) DEFINITIONS. The following terms shall have the following meanings for the purpose of this Section

Initiative Information

Date Approved 03/07/2024

Serial Number 24-03

Sponsor Name: FloridaRighttoCleanWater.org

Sponsor Address: 13300 South Cleveland Avenue, Suite 56, Fort Myers, FL 33907

CONSTITUTIONAL AMENDMENT FULL TEXT

(1) "Clean and healthy waters" are waters free from harm or threat of harm that occurs after the effective date of this Section. Indicators of clean and healthy waters include water quality safe for drinking, fishing, harvesting, and recreational activities; sufficient water quality, quantity, flow, filtration, and storage to sustain aquatic ecosystem services as well as thriving populations and diverse communities of native fish and wildlife; and stability of other ecological processes and functions.

(2) "Harm" refers to an adverse effect on waters, while "threat of harm" refers to the risk of such an effect, whether the effect is immediate or foreseeable. Adverse effects include those that are physical, chemical, biological, radiological, or a combination thereof. Such adverse effects on waters include but are not limited to contamination by pathogens, toxicants, or other injurious pollutants; nutrient loading or alteration of levels, flow, or storage of waters that deteriorates the health or habitat of native fish or wildlife; and introduction of exotic or invasive species or overexploitation of native species. Determination of such adverse effect or risk of such effect shall be based on the best available scientific evidence.

(3) "Person" refers to a natural person as well as a legal entity, to include nonprofit organizations, corporations, and tribal and governmental entities.

(4) "State executive agencies" refers to the following governmental entities and officers: The Governor; the Cabinet and members of the Cabinet; each State executive officer, State executive department, and State executive departmental unit; the Fish and Wildlife Conservation Commission; each water management district; and each officer and governmental entity of the executive branch having statewide jurisdiction or jurisdiction in more than one county.

(5) "Waters" refers to the aquatic ecosystems of aquifers, bays, creeks, estuaries, estuarine systems, lagoons, lakes, rivers, riverine systems, springs, streams, wetlands, and intracoastal and coastal waters within the boundaries of the State of Florida and shall include the natural tributaries and artificial waterways that impact these water bodies. Waters owned entirely by one person other than the state are included only in regard to possible discharge on other property or water. This term shall include fresh, brackish, saline, tidal, surface, ground, and underground water associated with these water bodies.

(f) IDENTIFICATION OF AFFECTED CONSTITUTIONAL PROVISIONS. Because a fundamental right inherently restrains all branches of government from violating such a right, this Section may affect constitutional provisions in Article IV, Section 1 (Governor), Section 4 (Cabinet), Section 6 (Executive departments), and Section 9 (Fish and Wildlife Conservation Commission) as well as Article III, Section 1 (Legislature). This Section relates to other constitutional provisions regarding waters, such as Article II, Section 7 (Natural resources and scenic beauty), but does not otherwise affect those provisions.

(g) SELF EXECUTING. This Section is enforceable without the aid of legislative enactment.

(h) EFFECTIVE DATE. This Section shall become effective immediately upon approval by the electors of Florida.

(i) SEVERABILITY. If any part of this Section, or the application of this Section to any person or circumstance, is held invalid, the remainder of this Section, including the application of such part to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the parts of this Section are severable

Initiative Information

Date Approved 03/07/2024

Serial Number 24-03

Sponsor Name: FloridaRighttoCleanWater.org

Sponsor Address: 13300 South Cleveland Avenue, Suite 56, Fort Myers, FL 33907