

Behind Justice Stevens' Recusal in Florida Case

Supreme Court Justice John Paul Stevens' surprise recusal on Wednesday in a Florida property rights case may have been triggered by media inquiries about Stevens' Ft. Lauderdale property based on information provided last week by a group that filed a brief in the case.

The recusal came in *Stop the Beach Renourishment Inc. v. Florida Department of Environmental Protection*, which asked whether a state program aimed at restoring eroded beaches -- and a state court ruling interpreting it -- amounted to an unconstitutional taking. The replenished beach area belongs to the state which, property owners say, diminishes the value of their properties by turning beachfront houses into "beach view" properties.

Ordinarily, when a justice recuses in a case, that fact is known before oral argument, because the justice will already have stated his or her intention not to participate at the petition-granting stage. Stevens participated in the case at earlier stages, so his absence at argument was unexpected. "I was as surprised as anyone else when the chair was empty," said D. Kent Safriet of Hopping Green & Sims of Tallahassee, who argued for the property owners on Wednesday.

Stevens declined to discuss the matter, but a possible explanation is offered by Ilya Shapiro, senior fellow in constitutional studies at the Cato Institute, which filed a brief in the case on the side of property owners. Shapiro said that "a fan of Cato" he won't name sent him public documents about Stevens' condominium property in Ft. Lauderdale. The documents indicate that the justice's property is within a renourishment zone similar to the property at issue in the case.

Shapiro said he did not file a recusal motion asking Stevens to bow out, because it "might seem self-serving." Conventional wisdom, Shapiro added, puts Stevens in the camp of justices who would approve of the government program, so "it seemed that not having him in the case would help the property owners."

Instead, Shapiro sent the material to several journalists, at least one of whom, he said, conveyed the information to Stevens and asked for comment, without success. Nothing more was heard on the subject until the argument began with Stevens not on the bench.

Footnote: Ten years ago, Stevens recused in another case that could have affected property he owns. He did not participate when the Court denied review of a "right to farm" statute in Iowa, where he owned a 200-acre farm.