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Beaches a major playground for controversy

By Doug Sword

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Beachfront property is outrageously expensive, its owners probably pay close to a quarter of all property taxes, and all they want is a little privacy.

But they live in a state where the population has nearly doubled in the last 30 years, most of those sand-loving, vote-casting residents do not live on the water and the Florida Constitution guarantees that it holds at least a portion of all beaches in public trust for all to enjoy.

That makes frequent clashes between these groups all but inevitable. The most watched one these days is a case the U.S. Supreme Court will decide sometime in the next three months.

Not surprisingly, the case, Stop the Beach Renourishment Inc. v. Florida Department of Environmental Protection, has brought all the passion expected of a suit involving that most basic of American rights, the right to enjoy your own property.

In this case, the homeowners' argument goes, the Florida Supreme Court okayed the idea that local governments could “obliterate constitutionally protected private property rights under the guise of ‘environmental protection.' ”

But the state is relying on more than the fact that renourished beaches provide protection from storms. One of the most oft-quoted passages about the right of Floridians to their beaches showed up in at least one brief, taken from a 1939 Florida Supreme Court decision: “No part of Florida is more exclusively hers, nor more properly utilized by her people than her beaches. And the right of the public of access to, and enjoyment of, Florida's oceans and beaches has long been recognized by this Court.”

After losing on appeal to the state supreme court, the landowners from in and around Destin in the Panhandle took their case to the U.S. Supreme Court. They want the high court to rule that there was a “taking” of their land during a 2006 renourishment that placed 75 feet of beach in front of their homes against their wishes.

They say the property rights they owned included a “right of contact” with the water and the right to any sand that may accrete to their beach over time. The renourishment took those rights away and they want to be compensated.

Twenty one groups have filed friend-of-the-court briefs for this case. Lining up with the property owners who brought the suit are home builders, constitutional conservatives and property rights groups.

Supporting Florida's arguments are other coastal states, the federal and local governments and beach access groups.

“The usual cast of characters,” quips Kent Safriet, the attorney for the landowners.

Florida's arguments boil down to this: The state owns the beach seaward of the mean

high water line, and if that submerged land is raised up and turned into white, sandy beach by a renourishment, the state still owns it. And the public can use it.

The state also argues that there is no such thing as a “right of contact” with the water.

There is only a right to access, which the landowners continue to enjoy. While landowners would lose any accretion to their beach, which may or may not occur, they are more than compensated by being protected from the erosion visited on their shoreline by the next big hurricane or storm.

But property rights advocates say this is absurd, since the most basic feature of Gulffront property is that is actually on the gulf. The Florida Supreme Court's ruling that there was no “taking” of property rights since this particular right does not exist is simply a nifty way of getting around the U.S. Constitution's prohibition against taking private property without just compensation, according to a group including the Cato Institute, a libertarian think tank.

One of the more inventive arguments comes from Surfrider, a group started by California surfers in the 1980s.

Surfrider argues that the landowners are trying to get a “windfall” out of the project. Not only are they benefitting from the protection the project gave them from erosion, they are seeking ownership of the state land that used to be submerged, plus any sand that later accretes to that beach.

As for the argument that the landowners have lost an alleged “right of contact” with the water, they have not, Surfrider says. They just do not enjoy that right exclusively anymore.

Besides, nature itself, denies property owners with direct contact to the water, the group argues. Private property stops at the mean high water line.

When the sea is at high tide that is the one moment in he day when private property actually has contact with the sea, Surfrider argues. The rest of the day the property only has contact with state-owned wet sand.

After a renourishment, the only difference is that the private property has contact with state-owned dry sand.

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